

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AMAZON.COM, INC. ET AL,) CV-18-00767-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) APRIL 27, 2018
)
PERSONAL WEB TECHNOLOGIES, LLC) PAGES 1-48
ET AL,)
)
DEFENDANT.)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: **BY: MICHAEL SHERMAN**
SANDEEP SETH
WESLEY MONROE
STUBBS ALDERTON MARKILES, LLP
15260 VENTURA BLVD., 20TH FLOOR
SHERMAN OAKS, CA 91403

FOR THE DEFENDANT: **BY: J. DAVID HADDEN**
PHILLIP HAACK
SAINA SHAMILOV
FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA

APRIL 27, 2018

P R O C E E D I N G S

(COURT CONVENED AT 9:57 A.M.)

THE CLERK: CALLING LOWEST CASE 18-0154. PERSONAL
WEB VERSUS ATCLASSIAN, AND ALL PERSONAL WEB CASES SCHEDULED.

MR. SHERMAN: GOOD MORNING, YOUR HONOR.

MICHAEL SHERMAN, STUBBS, ALDERTON, MARKILES. I REPRESENT
THE PERSONAL WEB AND LEVEL 3 IN THOSE CASES THAT THEY FILED, AS
WELL AS I AM REPRESENTING THEM IN THEIR CAPACITY AS DEFENDANTS
IN THE CASE FILED.

I HAVE WITH ME MY COLLEAGUES, SANDEEP SETH AND
MR. WESLEY MONROE.

MR. HADDEN: GOOD MORNING, YOUR HONOR.

DAVE HADDEN FOR AMAZON AND CUSTOMER DEFENDANTS. I HAVE
WITH ME SAINA SHAMILOV AND PHIL HAACK.

THE COURT: GOOD MORNING. GOOD MORNING TO EVERYONE.

SO MY DOCKET EXPLODES EVERY DAY WHENEVER YOU TAKE A
BREATH, BECAUSE YOU TAKE A BREATH FIFTEEN TIMES BEFORE YOU CAN
DO ANYTHING.

AND CLEARLY, THIS MOTION IS, THE PRELIMINARY INJUNCTION OR
THE MOTION TO STAY, WHICHEVER SIDE WE ARE ON, IS AN ATTEMPT TO
BRING SOME ORDER TO WHAT IS OTHERWISE A LITTLE BIT OF CHAOS.

BUT LET ME START WITH WHAT I ASKED YOU TO BE PREPARED TO
DISCUSS. I HAVE ABOUT 30 CASES IN ALL THAT PERSONAL WEB HAS
FILED AGAINST INDIVIDUAL DEFENDANTS, PLUS THE AMAZON CASE. AND

09:58:56 1 SO NOT ALL OF THE CASES ARE BEFORE ME TODAY, CORRECT?

09:59:01 2 MR. SHERMAN: I BELIEVE THAT'S BECAUSE, FOR WHATEVER
09:59:03 3 REASON, MOTIONS FOR STAY WEREN'T FILED IN THOSE CASES, PERHAPS.

09:59:07 4 THE COURT: RIGHT.

09:59:07 5 MR. SHERMAN: I CAN'T THINK OF ANOTHER REASON.

09:59:09 6 MR. HADDEN: THERE ARE CASES IN OTHER JURISDICTIONS,
09:59:12 7 YOUR HONOR.

09:59:12 8 THE COURT: NO, I JUST MEAN THE 30 BEFORE ME, NOT ALL
09:59:15 9 OF THOSE CASES ARE FILING MOTIONS TO STAY RIGHT NOW.

09:59:18 10 MR. HADDEN: CORRECT. I THINK SOME OF THE DEFENDANTS
09:59:20 11 HAVE NOT BEEN SERVED, YOUR HONOR.

09:59:22 12 THE COURT: THAT COULD BE. OKAY. AND THAT'S FINE.

09:59:25 13 SO I KNOW THAT YOU ARE GOING TO THE MDL COMMITTEE AT THE
09:59:29 14 END OF MAY. AND I'M NOT ACTUALLY FAMILIAR WITH PATENT MDL'S, I
09:59:34 15 DON'T KNOW WHETHER YOU ARE.

09:59:35 16 MR. SHERMAN: YOUR HONOR, INTERESTINGLY, THE *NATIONAL*
09:59:39 17 *LAW JOURNAL* HAD AN ARTICLE, I THINK APPROXIMATELY FOUR OR
09:59:43 18 FIVE WEEKS AGO SAYING, YOU KNOW, HEADLINE, THERE MAY BE MDL'S
09:59:50 19 IN PATENT CASES FOLLOWING TC HEARTLAND.

09:59:54 20 THE COURT: YEAH.

09:59:55 21 MR. SHERMAN: AND THE REPORTER WHO WROTE THIS ARTICLE
09:59:59 22 ABOUT THIS POTENTIALLY NEW DEVELOPMENT, AND THERE ARE SEVERAL
10:00:03 23 CASES, IT WAS REPORTED, BEFORE THE MDL PANEL NOW.

10:00:08 24 AND AS I'M SURE COUNSEL WOULD AGREE, ONE OF THE PRIMARY
10:00:13 25 ISSUES THERE IS GOING TO BE THE LEVEL OF COMMONALITY. I MEAN,

1 THE ISSUE OF EFFICIENCY, I THINK IS FOREGONE, IF THERE'S
2 COMMONALITY.

3 SO WHAT HAD HAPPENED, IF I MAY, WAS IN EARLY JANUARY, MY
4 CLIENTS FILED PATENT CASES, PATENT LITIGATION CASES IN THE
5 NORTHERN DISTRICT, IN THE EASTERN DISTRICT OF TEXAS, IN
6 DELAWARE, IN THE SOUTHERN DISTRICT OF NEW YORK, AND THE EASTERN
7 DISTRICT OF NEW YORK, IN THE CENTRAL DISTRICT OF CALIFORNIA,
8 AND THERE ARE MORE CASES TO BE FILED BECAUSE MY CLIENT'S
9 PATENTS, WE BELIEVE, ARE BEING INFRINGED, OKAY.

10 AND AMAZON THEN FILED ITS DJ ACTION IN EARLY FEBRUARY. WE
11 HAD BEEN WORKING ON AN MDL MOTION, AND THERE'S A LOT OF
12 PAPERWORK TO PUT TOGETHER WITH RESPECT TO THOSE MOTIONS.

13 THE COURT: OF COURSE.

14 MR. SHERMAN: AND THEN THE NEXT THING THAT HAD
15 HAPPENED WAS WE WERE SERVED WITH AMAZON'S PRELIMINARY
16 INJUNCTION MOTION THAT WE ARE HERE ON THIS MORNING.

17 WHEN I SAW THE PAPERS, I REALIZED, OH MY GOODNESS, WE GOT
18 A QUICK RETURN DATE ON THIS PI MOTION, AND THERE'S A LOT OF
19 WORK TO BE DONE.

20 AND SO ONE'S FIRST INSTINCT, OF COURSE, IS TO CALL
21 OPPOSING COUNSEL, AND WE HAD A VERY PLEASANT CONVERSATION, AND
22 I SAID MR. HADDEN, I NEED SOME MORE TIME, AND HE WAS GRACIOUS
23 ABOUT IT.

24 AND I SAID, BY THE WAY, WE ARE FILING OUR MDL MOTION THE
25 NEXT DAY OR TWO OR THREE, WHY DON'T WE TRY TO DO THIS IN SOME

10:02:04 1 STAGED OR EFFICIENT WAY, WE DON'T THINK YOU ARE RIGHT ON THE PI
10:02:09 2 MOTION, YOU THINK YOU ARE RIGHT ON THE PI MOTION.

10:02:12 3 BUT ULTIMATELY, AT THE END OF THE DAY, ESPECIALLY SINCE
10:02:17 4 YOU AGREE WITH US, THIS IS ALL COMMON. WHY DON'T WE GET BEFORE
10:02:22 5 THE MDL PANEL SO WE CAN BRING SOME EFFICIENCY TO THIS PROCESS
10:02:26 6 AND NOT HAVE TO DEAL WITH MULTIPLE JUDGES.

10:02:29 7 BY THE WAY, YOUR HONOR WAS SELECTED BY US AS A
10:02:34 8 RECOMMENDATION TO THE MDL PANEL. CONGRATULATIONS.

10:02:38 9 THE COURT: THAT'S A BACKHANDED COMPLIMENT, IF EVER I
10:02:42 10 HEARD ONE.

10:02:42 11 MR. SHERMAN: SO THE DISCUSSION THAT ENSUED WAS, HAVE
10:02:48 12 THE PI MOTION GO FORWARD AFTER THE MDL.

10:02:51 13 THE COURT: SO WHAT'S INTERESTING TO ME ON THIS,
10:02:54 14 MR. SHERMAN, IS IF I WERE TO GRANT THE PI MOTION, I DON'T THINK
10:02:59 15 THERE WOULD BE ANY NEED FOR AN MDL.

10:03:01 16 AND SO THEN I'M IN THIS, WELL, BECAUSE THEN I'VE STAYED
10:03:07 17 ALL CASES YOU HAVE BROUGHT, OR COULD BRING UNTIL I RESOLVE THE
10:03:12 18 AMAZON ISSUES. AND THERE'S NO REASON FOR AN MDL.

10:03:16 19 AND I'M NOT SUGGESTING THAT THE MDL COMMITTEE WOULDN'T SEE
10:03:19 20 IT DIFFERENTLY, YOU MIGHT STILL WANT TO BRING THEM ALL TO ME SO
10:03:24 21 THAT I COULD SUPERVISE THE RESOLUTION OF THE DISPUTE. AND I
10:03:27 22 NEVER HAVE A POSITION ON WHETHER IT SHOULD BE AN MDL OR NOT.
10:03:31 23 BUT I KNOW THAT THE MDL COMMITTEE GENERALLY ADVISES JUDGES TO
10:03:39 24 WHO THESE INDIVIDUAL CASES TO CONTINUE AND HEAR AND DECIDE
10:03:41 25 MATTERS IN THE NORMAL COURSE AND PAY NO ATTENTION TO THE MDL

10:03:45 1 HEARING SCHEDULE. AND I RESPECT THAT.

10:03:48 2 AND YET, MANY JUDGES STAY CASES PENDING THAT DECISION.

10:03:54 3 MR. SHERMAN: WE'VE DONE THAT IN NEW YORK, FOR
10:03:57 4 EXAMPLE, AND IN THE EASTERN DISTRICT OF TEXAS, FOR EXAMPLE.

10:04:00 5 THE COURT: RIGHT.

10:04:00 6 MR. SHERMAN: AND SO THE POINT IS WHETHER IT WAS WITH
10:04:02 7 THE FENWICK AND WREST OFFICE, BECAUSE THEY'VE APPEARED ON
10:04:05 8 BEHALF OF MANY DEFENDANTS ALL OVER THE PLACE, OR WITH OTHER
10:04:08 9 COUNSEL IN THOSE FEW INSTANCES, WE'VE GOTTEN TO THE POINT, I
10:04:16 10 BELIEVE.

10:04:16 11 AND BY THE WAY, YOUR HONOR, IF THERE ARE TECHNICAL
10:04:19 12 QUESTIONS THAT ARISE, I MAY HAVE TO ASK ONE OF MY COLLEAGUES TO
10:04:23 13 JUMP IN. I HOPE YOUR HONOR DOESN'T MIND.

10:04:25 14 THE COURT: YOU KNOW WHAT, I WOULD MUCH RATHER HEAR
10:04:31 15 ONCE FROM THE PERSON WHO CAN ANSWER THE QUESTION THAN ONCE FROM
10:04:36 16 THE PERSON WHO CAN'T AND THEN FROM THE ONE WHO CAN. I WELCOME
10:04:39 17 THAT.

10:04:39 18 MR. SHERMAN: OKAY. THANK YOU.

10:04:40 19 SO WE ARE NOT AVERSE TO HEARING WHAT OTHER TRIBUNALS MIGHT
10:04:48 20 HAVE TO SAY ON THE ISSUE OF EFFICIENCY AND ECONOMY BEFORE
10:04:53 21 HURDLING IN.

10:04:54 22 YOUR HONOR DID MAKE THE OBSERVATION THAT, WELL FROM AN
10:04:58 23 EFFICIENCY STANDPOINT, IF THE PI MOTION WERE GRANTED, MAYBE
10:05:04 24 THAT'S THE MOST EFFICIENT THING AND THERE WOULDN'T EVEN NEED TO
10:05:07 25 BE --

1 THE COURT: WELL, IT'S NOT INEFFICIENT, IT JUST NEEDS
2 TO BE CORRECT.

3 MR. SHERMAN: I UNDERSTAND.

4 PUNISHING SAUDI ARABIA, THEY PUNISH PEOPLE FOR JAY WALKING
5 BY CAPITAL PUNISHMENT, SO THERE'S NO JAY WALKING. SO BY
6 ANALOGY, I'M SUGGESTING THAT WE HAVE SOME VERY GOOD REASONS WHY
7 SUBSTANTIVELY, MERITS-WISE, THE PI MOTION OUGHT NOT BE GRANTED.

8 PERHAPS ONE OF THE MORE IMPORTANT ONES BEING THE DATATERN
9 DECISION OUT OF THE FEDERAL CIRCUIT REQUIRES A CASE -- WELL,
10 THE ARTICLE III AND THE DATATERN DECISION REQUIRES A CASE FOR
11 CONTROVERSY.

12 AND SINCE PERSONAL WEB LEVEL 3 HAVE NOT FILED A COMPLAINT
13 AGAINST AMAZON ALLEGING DIRECT INFRINGEMENT BY AMAZON, AMAZON
14 COULD, IF IT SO CHOSE, SEEK TO INTERVENE IN THOSE ACTIONS, AND
15 THEY'VE ALREADY FILED A BRIEF BEFORE THE MDL PANEL.

16 YOUR HONOR HAD REMARKED IN AN EARLIER MATTER ABOUT THE
17 NEEDLESS PROLIFERATION OF LITIGATION, AND I COULDN'T AGREE
18 MORE, WHICH IS WHY EITHER THE MDL PANEL IS GOING TO ACKNOWLEDGE
19 THE FACT THAT THERE'S A LOT OF COMMONALITY HERE ON ISSUES SUCH
20 AS THE USE OF THE RUBY ON RAILS ARCHITECTURE THAT WE ALLEGE IN
21 CONJUNCTION WITH THE INDIVIDUAL DEFENDANT'S CONTROL OVER ETAGS,
22 IS THE THEORY OF INFRINGEMENT, OR THEY ARE GOING TO SAY, NO,
23 LET'S JUST HAVE 55 CASES.

24 THE COURT: THE MDL ISSUE, AND YOU KNOW MORE ABOUT
25 THIS THAN I DO, THE AMERICAN INVENTS ACT ELIMINATED THE

1 OPPORTUNITY FOR A PLAINTIFF TO SUE MULTIPLE DEFENDANTS IN A
2 SINGLE CASE.

3 MR. SHERMAN: THAT'S RIGHT.

4 THE COURT: OKAY. SO NOW HERE WE ARE GOING TO AN
5 MDL, ISN'T THAT A BACK DOOR WAY AROUND THE AI A?

6 MR. SHERMAN: WELL, YOU KNOW, I DON'T BELIEVE --

7 THE COURT: IS THAT A YES?

8 MR. SHERMAN: NO, IT'S NOT A YES, BECAUSE CONGRESS,
9 IN ITS WISDOM, DECIDED THAT IT DIDN'T WANT TO HAVE A WHOLE
10 BUNCH OF FOLKS GOING TO THE EASTERN DISTRICT OF TEXAS, OR WHAT
11 WE WILL CALL PLAINTIFF-FRIENDLY JURISDICTIONS, AND SO THEY
12 DIDN'T WANT THAT KIND OF RAMPANT VENUE FORUM SHOPPING.

13 AND YET, YOU KNOW, AMAZON, IT'S PAPERS EXCORIATES US FROM
14 FILING A LOT OF LAWSUITS. WELL, YOU CAN'T HAVE IT BOTH WAYS.

15 THE COURT: SO THAT'S NOT MY CONCERN. YOU CAN FILE
16 AS MANY LAWSUITS AS YOU WANT. AND YOU HAVE TO DO EACH ONE
17 SEPARATELY, AND THEN HERE -- BUT AGAIN, THE MDL COMMITTEE WILL
18 HAVE TO GRAPPLE WITH THAT ISSUE AND IT MAY OR MAY NOT BE A
19 CONCERN OF THE PARTIES.

20 WHAT I'M LOOKING AT HERE, AND I'M NOT SURE WHETHER I WOULD
21 STAY THIS ACTION JUST UNTIL THE MDL RULES, I'M LESS INCLINED TO
22 DO THAT SINCE I HAVE SO MANY OF THEM, THAT, YOU KNOW, IF I HAD
23 ONE CASE, I WOULDN'T WANT TO BE THE LONE PERSON WANDERING IN
24 THE DESSERT OUT THERE BEYOND ANYONE ELSE, BUT I HAVE THE
25 OVERWHELMING MAJORITY OF THE FILED CASES, SO I THINK I NEED TO

10:08:22 1 MOVE FORWARD.

10:08:23 2 OKAY. THE OTHER THING I WANT TO MOVE INTO IS I HAVE TWO
10:08:29 3 SIDES OF A COIN. I'M ASKED TO EITHER GRANT A PRELIMINARY
10:08:34 4 INJUNCTION ON BEHALF OF AMAZON TO ENJOIN PERSONAL WEB FROM
10:08:42 5 PURSUING ANY OF, WE WILL CALL THEM CUSTOMER CASES, UNTIL THE
10:08:47 6 DECLARATORY RELIEF ACTION IS CONCLUDED. SO THAT WOULD HAVE
10:08:51 7 SCOPE BEYOND THE CASES I HAVE.

10:08:52 8 OR IN THE ALTERNATIVE, SEPARATE MOTION BY THE INDIVIDUAL
10:08:57 9 DEFENDANTS TO STAY THE CASE PENDING CONCLUSION.

10:09:01 10 YOU'VE BRIEFED IT AND INTERCHANGED THE WORDS, AND I KNOW
10:09:04 11 YOU ARE JUST GIVING ME ALTERNATIVES, AND I REALLY APPRECIATE
10:09:08 12 THAT. I AM MORE INCLINED TO STAY THE CASES ON AN INDIVIDUAL
10:09:14 13 BASIS AND THEN SUA SPONTE STAY, ISSUE AN ORDER TO SHOW CAUSE
10:09:19 14 WHY I SHOULDN'T STAY THE REMAINDER OF THEM.

10:09:21 15 I KNOW I DON'T HAVE, IF THERE'S NO SERVICE I HAVE TO WAIT
10:09:25 16 ON THAT, BECAUSE I THINK THAT MIGHT BE A MORE PRUDENT WAY TO
10:09:30 17 PROCEED.

10:09:32 18 SO LET'S GET INTO THE SUBSTANCE HERE NOW.

10:09:34 19 MR. SHERMAN: MAY I GET MY NOTES AT COUNSEL TABLE?

10:09:36 20 THE COURT: SURE.

10:09:37 21 MR. HADDEN: IF WE ARE GOING TO ARGUE, IT'S OUR
10:09:39 22 MOTION, CAN I ARGUE, YOUR HONOR?

10:09:40 23 THE COURT: SO I'M GOING TO MENTION A FEW ISSUES AND
10:09:42 24 THEN I WANT TO HEAR FROM YOU.

10:09:43 25 MR. HADDEN: SURE. THANK YOU, YOUR HONOR.

1 THE COURT: AND THIS COURTROOM, I'M STRUGGLING TO GET
2 THE SOUND SYSTEM RIGHT. I'M NORMALLY IN A SMALLER COURTROOM.
3 SO I NEED YOU RIGHT THERE, AND I'M SORRY YOU HAVE TO BE THERE.

4 MY VIEW OF THE PAPERS IS THAT I AGREE WITH MR. HADDEN THAT
5 THE AMAZON CASE SHOULD GO FORWARD TO RESOLUTION. AND I WILL
6 SAY THAT I SPENT QUITE A BIT OF TIME, MR. SHERMAN, READING THE
7 COMPLAINT AND READING THE EXPERT REPORTS THAT YOU PROVIDED,
8 BECAUSE ON THE PRELIMINARY INJUNCTION, OF COURSE YOU NEEDED
9 EVIDENCE.

10 AND I AM NOT SATISFIED THAT YOU HAVE ADEQUATELY ALLEGED
11 THE ROLE THAT RUBY ON RAILS PLAYS, OR THAT YOU EVEN CAN BASED
12 ON DR. RUSS'S REPORT OR DECLARATION, I SUPPOSE. AND THAT WOULD
13 BE MADE CLEAR TO ME IN INFRINGEMENT CONTENTIONS.

14 BUT WHAT DOES SEEM CLEAR IS THAT THE PRELIMINARY
15 INJUNCTION MOTION DOES MAKE CLEAR THAT A SUBSTANTIAL, IF NOT
16 ALL OF THE ISSUES PRESENTED, OVERLAP AND CAN BE DETERMINED,
17 BECAUSE WHAT -- IT APPEARS WHAT AMAZON IS ASKING FOR IN
18 DECLARATORY RELIEF IS A FINDING THAT NEITHER S3 OR THE TOOL KIT
19 TO CUSTOMERS THAT SHOWS HOW TO USE RUBY ON RAILS INFRINGES.

20 AND IT DOESN'T HAVE TO BE COMPLETE OVERLAP, IT DOESN'T
21 HAVE TO COMPLETELY RESOLVE THE CASE FOR ME TO ENJOIN OR STAY
22 BASED ON THE CUSTOMER EXCEPTIONS.

23 SO I'M INCLINED TO DO THAT. AND I DON'T SEE -- I MEAN,
24 CERTAINLY EITHER WITH A PRELIMINARY INJUNCTION OR WITH A STAY,
25 IF YOU WERE TO ADEQUATELY ALLEGE DIFFERENTLY IN YOUR

1 INFRINGEMENT CONTENTIONS, THAT WOULD BE GROUNDS TO EITHER
2 MODIFY OR LIFT THE PRELIMINARY INJUNCTION OR LIFT THE STAY.

3 AND SO THIS IS, YOU KNOW, IN A SENSE, I'M GOING TO GIVE
4 YOU THE KEYS TO THE JAI HOUSE DOOR HERE IN LOCKING UP YOUR CASE
5 TO MAKE THOSE PLEADINGS.

6 BUT YOU BARELY MENTION RUBY ON RAILS. YOU DON'T MAP IT ON
7 TO THE CLAIMED ELEMENTS AT ALL. IT'S NOT EVEN CLEAR THAT IT
8 MAPS ON TO ALL OF THE CLAIMS THAT YOU'VE ASSERTED.

9 IT'S NOT EVEN CLEAR TO ME WHAT CLAIMS YOU ARE ASSERTING OR
10 HOW THIS -- I MEAN, THE COMPLAINT IS FINE AS FAR AS I'M
11 CONCERNED.

12 I MEAN, I KNOW WE USED TO DO A MUCH HIGHER LEVEL
13 COMPLAINT. I'M NOT ASKING FOR AN AMENDMENT TO THE COMPLAINT,
14 AND MAYBE THERE WILL BE A MOTION TO DISMISS ON THAT VERY BASIS,
15 I'M NOT DECIDING THAT NOW, BUT THAT'S NOT MY CONCERN HERE.

16 I REALLY WANT TO SEE INFRINGEMENT CONTENTIONS WHERE YOU
17 HAVE TO ACTUALLY MAP IT.

18 MR. SHERMAN: YOUR HONOR, IF I MAY, I OBVIOUSLY HAVE
19 A BIT OF THE LABORING ORE HERE.

20 YOUR HONOR INDICATED THAT THERE WAS CONSIDERATION OF THE
21 EXPERT REPORTS, AND I APPRECIATE THAT. AND I'M NOT EXACTLY
22 SURE WHICH MOTION NOW WE ARE TALKING ABOUT.

23 THE COURT: WELL, THEY AREN'T PARTICULARLY DIFFERENT
24 FROM EACH OTHER, ALTHOUGH THE EVIDENCE IS ONLY, I THINK,
25 SUBMITTED.

10:13:24 1 MR. HADDEN: IN THE PRELIMINARY INJUNCTION.

10:13:28 2 THE COURT: IN THE PRELIMINARY INJUNCTION.

10:13:29 3 MR. HADDEN: YES, YOUR HONOR.

10:13:29 4 MR. SHERMAN: THE REASON I MENTION THAT, YOUR HONOR,
10:13:31 5 IS THIS, I DO BELIEVE THAT THERE MAY BE SOME ELEMENT OF CART
10:13:39 6 BEFORE HORSE.

10:13:40 7 THE COURT: OKAY.

10:13:41 8 MR. SHERMAN: OKAY. AND I TALK ABOUT CART BEFORE
10:13:43 9 HORSE BECAUSE, AND I ALLUDED TO THIS IN THE DATATERN FEDERAL
10:13:50 10 CIRCUIT DECISION, THIS IS WHAT THE COURT SAID, TO THE EXTENT
10:13:57 11 THAT APPELLEES ARGUE THAT THEY HAVE A RIGHT TO BRING THE DJ
10:14:04 12 ACTION SOLELY BECAUSE THEIR CUSTOMERS HAVE BEEN SUED FOR DIRECT
10:14:07 13 INFRINGEMENT, THEY ARE INCORRECT.

10:14:10 14 DATATERN HAS ACCUSED CUSTOMERS USING APPELLEE'S SOFTWARE
10:14:14 15 PACKAGES OF INFRINGING THE ASSERTED METHOD CLAIMS, BUT THERE
10:14:18 16 ARE NO ARGUMENTS THAT THERE'S A CASE FOR CONTROVERSY BETWEEN
10:14:20 17 DATATERN AND APPELLEES ON DIRECT INFRINGEMENT.

10:14:25 18 AND THAT ISSUE OF AMAZON'S CLAIM THAT WELL, SINCE WE ARE
10:14:37 19 INDEMNIFYING, THAT TAKES CARE OF IT ALL, AND WE HAVE STANDING
10:14:40 20 TO BE HERE, I BELIEVE -- AND ONCE YOUR HONOR DEALS WITH THE
10:14:50 21 12(B) MOTION TO DISMISS --

10:14:51 22 THE COURT: OKAY. SO MAYBE YOU JUST ANSWERED THE
10:14:53 23 QUESTION THAT WAS IN MY MIND AS YOU WERE SPEAKING. WHERE DID
10:14:55 24 YOU BRIEF THAT?

10:14:56 25 MR. SHERMAN: EXACTLY. YOUR HONOR, THAT'S NOT SET

10:14:59 1 FOR HEARING UNTIL --

10:15:00 2 THE COURT: OKAY. SO I DON'T WANT TO HEAR ABOUT
10:15:03 3 DATATERN TODAY.

10:15:04 4 MR. SHERMAN: BUT I BELIEVE IT'S --

10:15:05 5 THE COURT: YOU HAD THE OPPORTUNITY TO BRIEF THAT.
10:15:06 6 I'M NOT GOING TO --

10:15:08 7 MR. SHERMAN: YOUR HONOR, WE REFERENCED THAT IN OUR
10:15:09 8 PAPERS AND I --

10:15:11 9 THE COURT: OKAY. INCORPORATION BY REFERENCE IS A
10:15:14 10 PHRASE THAT'S WASTED. I DON'T LOOK AT OTHER PAPERS.

10:15:16 11 MR. SHERMAN: I DID NOT SAY IT WAS AN INCORPORATION
10:15:19 12 BY REFERENCE, YOUR HONOR.

10:15:20 13 THE COURT: I DON'T SEE A CITATION TO DATATERN.

10:15:35 14 WELL, IN YOUR OPPOSITION TO THE MOTION TO STAY, THERE'S NO
10:15:39 15 TABLE BECAUSE IT'S NOT LONG ENOUGH, AND IN YOUR OPPOSITION TO
10:15:43 16 THE PRELIMINARY INJUNCTION, YOU DIDN'T ADDRESS THAT ISSUE.

10:15:47 17 MR. HADDEN, AM I MISSING SOMETHING?

10:15:48 18 MR. HADDEN: NO. YOU ARE NOT, YOUR HONOR.

10:15:51 19 MR. SHERMAN: I DO REFERENCE IT.

10:15:53 20 THE COURT: WHERE?

10:15:54 21 MR. SHERMAN: I REFERENCE IT IN OUR OPPOSITION ON
10:15:56 22 PAGE 3 AT LINE 19.

10:15:57 23 THE COURT: WHICH BRIEF ARE YOU LOOKING AT?

10:15:59 24 MR. SHERMAN: I'M LOOKING AT DOCUMENT 37, THE
10:16:02 25 OPPOSITION TO PLAINTIFF'S CORRECTED MOTION TO ENJOIN DEFENDANTS

10:16:06 1 FROM LITIGATING --

10:16:08 2 THE COURT: AND WHICH PAGE ARE YOU ON?

10:16:10 3 MR. SHERMAN: YOUR HONOR, I AM ON PAGE 3, LINE 19,
10:16:18 4 THROUGH PAGE 4, LINE 5.

10:16:19 5 THE COURT: OKAY. THERE IT IS.

10:17:13 6 MR. HADDEN: I COULD RESPOND TO DATATERN IF YOU WOULD
10:17:16 7 LIKE, YOUR HONOR.

10:17:17 8 MR. SHERMAN RAISED THIS DATATERN ISSUE AFTER WE FILED OUR
10:17:22 9 COMPLAINT. AND WE FILED AN AMENDED COMPLAINT EXPLICITLY
10:17:27 10 ADDRESSING HIS CLAIM THAT THERE WAS NO JURISDICTION UNDER
10:17:29 11 DATATERN.

10:17:30 12 FIRST, WE DISAGREE WITH THAT. IN DATATERN, THERE WAS DJ
10:17:36 13 ACTION FILED BY MICROSOFT WITH RESPECT TO SOME PATENTS, AND I
10:17:38 14 THINK THE OTHER ONE WAS BY SAP.

10:17:40 15 AND THE FEDERAL CIRCUIT FOUND THAT FOR ALL BUT I THINK ONE
10:17:46 16 MICROSOFT CLAIM, THERE WAS JURISDICTION, BECAUSE THE
10:17:50 17 INFRINGEMENT CONTENTIONS EXPLICITLY CITED THE DOCUMENTS OF THE
10:17:54 18 SUPPLIER COMPANY, SAP OR MICROSOFT.

10:17:57 19 SO THAT, ALONE, WAS ENOUGH TO CREATE THE CASE OF
10:17:59 20 CONTROVERSY IMPLICITLY BETWEEN MICROSOFT AND THE PATENT.

10:18:03 21 THE COURT: AND SO IN THIS CASE, THE COMPLAINT
10:18:06 22 ALLEGES S3 HAS A SIGNIFICANT --

10:18:10 23 MR. HADDEN: ALL OVER THE PLACE. AND IF I GET TO MY
10:18:13 24 PRESENTATION, YOUR HONOR, I WILL EXPLAIN THAT TO THE COURT IN
10:18:15 25 DETAIL.

10:18:16 1 THE OTHER POINT IN DATATERN IS THERE WAS AN INDEPENDENT
10:18:19 2 BASIS THAT THE COURT SAID EITHER THERE IS THIS KIND OF IMPLICIT
10:18:23 3 ALLEGATION AGAINST THE TECHNOLOGY SUPPLIER, OR IF THE
10:18:28 4 TECHNOLOGY SUPPLIER HAS AN INDEMNITY OBLIGATION, THAT, ALONE,
10:18:33 5 CREATES STANDING.

10:18:34 6 SO WE HAVE AN INDEMNITY OBLIGATION.

10:18:36 7 THE COURT: SO THAT WOULD OPEN THE DOOR FOR YOU TO
10:18:38 8 INTERVENE AS AN ALTERNATIVE.

10:18:39 9 MR. HADDEN: AS AN ALTERNATIVE.

10:18:40 10 BUT YOU DON'T HAVE TO INTERVENE IN 50 CASES, AND IT
10:18:44 11 DOESN'T MAKE A LOT OF SENSE. SO WE AMENDED OUR COMPLAINT TO
10:18:48 12 EXPLICITLY PLEAD OUR INDEMNITY OBLIGATION AND AGREEMENT.

10:18:53 13 I WOULD LIKE TO THINK THAT I'M HERE ON BEHALF OF ALL THESE
10:18:56 14 CUSTOMERS BECAUSE THE UNIVERSE CHOSE ME, BUT IN FACT, WE ARE
10:19:01 15 HERE BECAUSE AMAZON IS HERE.

10:19:02 16 THE COURT: MR. SHERMAN, I'M NOT GOING TO LET YOU
10:19:05 17 CONTINUE, I THINK THAT'S PROBABLY NOT GOING TO BE A SUCCESSFUL
10:19:08 18 ARGUMENT. I WILL LOOK AT IT.

10:19:09 19 MR. SHERMAN: THE REASON WHY I BELIEVE IT'S A
10:19:11 20 SUCCESSFUL ARGUMENT, AND I DO NOT WISH TO RUN AFOUL OF EITHER
10:19:16 21 COURT PROCEDURE OR JUST GOOD COMMON SENSE, WE DID A LOT MORE
10:19:20 22 THAN INCORPORATE DATATERN BY REFERENCE IN OUR OPPOSITION
10:19:24 23 PAPERS.

10:19:24 24 THE COURT: NO, NO, IT WAS THERE, AND I APOLOGIZE
10:19:26 25 THAT I MISSED IT.

10:19:29 1 YOU KNOW, I WOULDN'T -- IT'S NOT FULLY DEVELOPED. I WILL
10:19:36 2 LOOK AT IT, I WILL CERTAINLY LOOK AT IT.

10:19:38 3 MR. SHERMAN: THAT WAS MY POINT, YOUR HONOR.

10:19:41 4 THERE IS AN ORDER HERE, AND I DON'T CLAIM TO -- YOUR HONOR
10:19:45 5 IS THE SUPREME AUTHORITY IN THIS COURTROOM ON THE ORDER, BUT
10:19:50 6 THERE IS A CART BEFORE HORSE ELEMENT TO THIS.

10:19:54 7 WE HAVE DISCUSSED IN GENERAL TERMS, WILLINGNESS TO STAND
10:19:59 8 DOWN UNTIL CERTAIN PREDICATE ACTIONS OCCUR, SUCH AS AN MDL.
10:20:08 9 MR. HADDEN SAID, WELL, IT WOULD HAVE BEEN INEFFICIENT TO
10:20:11 10 INTERVENE IN 50 ACTIONS. YEAH, BUT YOU KNOW WHAT, IF THEY ARE
10:20:15 11 ALL IN ONE COURTROOM, NOT QUITE AS BIG A DEAL, I WOULD SAY
10:20:20 12 RESPECTFULLY TO THE COURT AND TO MR. HADDEN.

10:20:22 13 BUT ALSO, ALSO, GIVEN THAT THIS COURT'S AUTHORITY IS
10:20:28 14 BOUNDED BY, IS THIS A CASE OR CONTROVERSY, AND YOUR HONOR HAS
10:20:38 15 INDICATED A DESIRE TO THINK ABOUT THIS A LITTLE BIT MORE.

10:20:41 16 THE COURT: SURE.

10:20:41 17 MR. SHERMAN: I STARTED OUT BY SAYING WE FILED A
10:20:43 18 12(B) (1) MOTION TO DISMISS, IT IS SET FOR HEARING ON JUNE 14TH,
10:20:47 19 WE ARE HAPPY TO PROCEED IN A CONSENSUAL MANNER IN STAYING
10:20:55 20 THINGS HERE ON THE INDIVIDUAL CASES.

10:20:58 21 OF COURSE WE WOULD LIKE THE MDL PROCEEDING TO GET GOING.
10:21:02 22 BUT I THINK THAT THERE IS A, I WILL SAY IT AGAIN, A CART BEFORE
10:21:11 23 HORSE ELEMENT TO THIS, AMAZON CAN PLACE ITSELF IN WHATEVER
10:21:15 24 ARMOR IT WISHES AS THE PROTECTOR OF A CUSTOMER.

10:21:19 25 BY THE WAY, YOU NEED TO BE NOT ONLY A CUSTOMER, YOU NEED

10:21:22 1 TO BE A RESELLER.

10:21:23 2 THE COURT: WELL, YOU KNOW, I'M NOT GOING TO, I DON'T
10:21:26 3 THINK IT'S QUITE THAT NARROW.

10:21:28 4 HERE'S THE REASON THAT I FOUND YOUR -- WE WILL GET INTO
10:21:32 5 MORE OF THE TECHNICAL ISSUES, THE COMPLAINT IS PLED AT A VERY
10:21:35 6 HIGH LEVEL. BUT THEN I DID LOOK AT YOUR EXPERT'S DECLARATION,
10:21:40 7 AND I STILL DON'T UNDERSTAND, OR YOU HAVE NOT EXPLAINED, I
10:21:44 8 SHOULD SAY, AND THERE WILL BE PLENTY OF ROOM FOR ME NOT TO
10:21:48 9 UNDERSTAND, BUT I DON'T THINK YOU'VE EXPLAINED HOW AND WHAT
10:21:50 10 ROLE RUBY ON RAILS ACTUALLY PLAYS.

10:21:52 11 AND YOUR INFRINGEMENT CONTENTIONS WHICH OF COURSE AREN'T
10:21:56 12 DUE YET, THAT'S THE ACID TEST FOR YOU.

10:22:00 13 SO IT MAY BE THAT I NEED TO PARCEL OUT LIMITED STAYS TO
10:22:07 14 GET TO SOME TIME POINTS.

10:22:10 15 SO IT MAY BE, MR. HADDEN, IF THERE'S AN AGREEMENT TO STAY
10:22:15 16 ALL OF THE CASES BEFORE ME UNTIL I DECIDE THE MOTIONS TO
10:22:22 17 DISMISS ON CASE OR CONTROVERSY, AT LEAST UNTIL THAT TIME YOU
10:22:27 18 GET EXACTLY WHAT YOU WANT. AND THEN I WILL HAVE IT FULLY
10:22:30 19 BRIEFED.

10:22:30 20 HAVE YOU BRIEFED THE MOTION TO DISMISS?

10:22:34 21 MR. HADDEN: I THINK SO. YES.

10:22:36 22 THE COURT: IT'S ALL BRIEFED. OKAY. SO YOU'VE HAD A
10:22:39 23 CHANCE TO ADDRESS THE CASE FOR CONTROVERSY.

10:22:42 24 MR. HADDEN: YES.

10:22:43 25 THE COURT: EXCELLENT. AND I HAVE NOT HAD A CHANCE

10:22:44 1 TO REALLY STUDY THAT.

10:22:49 2 SO -- AND BY THE TIME YOU COME BACK, I WILL KNOW FROM THE
10:22:52 3 COMMITTEE WHETHER ALL THE CASES WILL BE MINE, WHICH IS AN ADDED
10:22:56 4 BENEFIT.

10:22:58 5 AND YOU INDICATE THAT THE OTHER JUDGES HAVE STAYED THE
10:23:01 6 CASES PENDING THE MDL DETERMINATION.

10:23:04 7 MR. SHERMAN: YES.

10:23:04 8 THE COURT: SO IN FACT, AMAZON AND ALL THE
10:23:08 9 DEFENDANTS, UNTIL MAY 31ST, HAVE THE RELIEF YOU ARE SEEKING.

10:23:11 10 MR. HADDEN: THAT'S TRUE, YOUR HONOR.

10:23:12 11 THE COURT: GOOD.

10:23:12 12 MR. HADDEN: IF I COULD JUST ADDRESS THE MDL POINT
10:23:15 13 JUST BRIEFLY. MDL IS NOT THE TOOL TO SOLVE THIS PROBLEM.

10:23:20 14 THE COURT: NO, IT'S NOT.

10:23:21 15 MR. HADDEN: RIGHT. BECAUSE AT THE END OF THE MDL,
10:23:24 16 ALL THE CASES GO BACK TO THEIR HOME COURTS FOR 50 DIFFERENT
10:23:27 17 TRIALS.

10:23:27 18 THE COURT: YEP.

10:23:28 19 MR. HADDEN: AND THAT'S WHY THE FEDERAL CIRCUIT IN
10:23:30 20 ROCKSTAR, GOOGLE AND NINTENDO SAID NO. THE SOLUTION HERE IS
10:23:35 21 CUSTOMER GETS STAYED, ONE CASE GOES FORWARD.

10:23:39 22 THE COURT: YEAH.

10:23:40 23 SO AS I SAID, I'M NOT PREPARED TO RULE ON THE CASE OR
10:23:43 24 CONTROVERSY ISSUE, SO I'M JUST GOING TO COMMENT THAT IF I FIND
10:23:48 25 THAT AMAZON CAN BRING ITS SUIT, I WOULD, I WOULD BE INCLINED TO

1 GRANT THE PRELIMINARY INJUNCTION.

2 I THINK THAT THIS IS A CUSTOMER SUIT. I DO THINK THAT --
3 I MEAN, I AGREE WITH YOUR REPLY STATEMENT, MR. HADDEN, THAT I
4 ACTUALLY THINK THAT YOUR DECLARATORY RELIEF ACTION CAN RESOLVE
5 THE ENTIRE CASE BECAUSE YOU ALSO ALLEGE OR SEEK DECLARATORY
6 RELIEF ON THE TOOL KIT.

7 MR. HADDEN: IN ADDITION, YOUR HONOR, THIS CASE
8 SHOULD BE BARRED, RIGHT. WE HAVE LITIGATED THIS EXACT ISSUE.

9 THE COURT: WELL, AND I DON'T NEED TO DECIDE THAT
10 EITHER. I DON'T KNOW WHETHER THEY SHOULD BE BARRED OR NOT.
11 I'M ACTUALLY TRYING TO STAY WITH THE CUSTOMER USE ISSUE.

12 AND I DON'T AGREE THAT -- AND YOU CITED THE KAHN CASE, I
13 THINK.

14 MR. SHERMAN: YES, WE DID.

15 THE COURT: I THINK KAHN HAS BEEN LEFT BEHIND IN THE
16 DUST. AND I THINK KATZ STARTED THAT, AND I REALLY -- IT SAYS
17 WHAT YOU SAY, AS YOU REPRESENT IT, BUT I JUST THINK IT HAS BEEN
18 SUPERSEDED BY FRESH THINKING ON THE BENEFIT OF THIS RULE.

19 MR. SHERMAN: YOUR HONOR, I SENSE THAT THE COURT IS
20 EXTREMELY COMFORTABLE RIGHT NOW THAT, GIVEN A VOLUNTARY STAY OF
21 PROCEEDINGS IN THE TRIAL COURT, THAT JUNE 14TH WILL COME, WE
22 WILL SEE WHAT WILL HAPPEN WITH THE MDL, BECAUSE YOU ARE NOT
23 STAYING OR GOING TO THE MDL PANEL IN CHICAGO, I TAKE IT.

24 THE COURT: I'M NOT GOING. JUDGES DON'T GO TO THINGS
25 LIKE THAT.

10:25:27 1 MR. SHERMAN: YOU ARE NOT STAYING MY PARTICIPATING --

10:25:29 2 THE COURT: NO, NO, NOT AT ALL.

10:25:31 3 SO IN FACT, I GUESS IT WOULD ONLY BE A DISCOVERY -- I'M
10:25:34 4 NOT SURE -- I WOULD ONLY STAY, MAYBE DISCOVERY, BECAUSE I DON'T
10:25:38 5 KNOW WHAT ELSE --

10:25:40 6 MR. HADDEN: NOTHING IS GOING ON, BUT I DO THINK IT'S
10:25:42 7 IMPORTANT FOR THE MDL PANEL TO KNOW IF -- THAT THIS COURT IS
10:25:47 8 CONSIDERING GRANTING THE PI INJUNCTION.

10:25:49 9 THE COURT: SO -- BUT, WELL, MR. SHERMAN, IF THE
10:25:53 10 OTHER COURTS HAVE STAYED THEIR ACTIONS, THEY DIDN'T PROHIBIT
10:25:56 11 THE MDL FROM GOING FORWARD EITHER. SO IS THERE MAGIC
10:26:00 12 LANGUAGE?

10:26:01 13 MR. SHERMAN: I HAVE NOT BEEN BEFORE A JUDGE LIVE YET
10:26:04 14 IN ANY OF THESE CASES WHERE THIS ISSUE WAS IN THIS DETAIL.

10:26:07 15 THE COURT: WELL, FOR BETTER OR FOR WORSE, I ALWAYS
10:26:10 16 HAVE YOU COME IN FOR YOUR MOTIONS HERE.

10:26:12 17 MR. SHERMAN: IT'S ALWAYS A PLEASURE TO SEE YOU,
10:26:13 18 YOUR HONOR.

10:26:14 19 THERE'S JUST A COUPLE OF POINTS THAT ARE SORT OF OUT THERE
10:26:17 20 NOW. THE FIRST IS THE MDL, WHICH WE INTEND TO PROCEED.

10:26:20 21 OBVIOUSLY, IF COUNSEL WERE TO REPRESENT, I'M SURE HE
10:26:23 22 WOULDN'T, BUT IF THE COURT IS GOING TO GRANT THE PI THAT
10:26:26 23 YOUR HONOR HAS ALREADY INDICATED, FOR EXAMPLE, THAT YOU HAVEN'T
10:26:28 24 EVEN GOTTEN INTO THE ISSUE OF THE PRIOR AMAZON ACTION, SO I'M
10:26:34 25 SURE COUNSEL WOULDN'T GO THAT FAR.

1 BUT YOU'VE SUGGESTED ON SEVERAL OCCASIONS THIS MORNING,
2 READING THE COMPLAINT, READING THE COMPLAINT, READING THE
3 COMPLAINT, AND INTERESTINGLY, I'M TOLD BY MY VERY, VERY
4 EXPERIENCED PATENT COUNSEL, MR. SETH, MR. MONROE, AND
5 MR. MACEIKO, THAT WE WENT FAR, FAR, FAR BEYOND THE TWOMBLY
6 IQBAL REQUIREMENTS. THAT'S WHAT THEY TOLD ME, FOR BETTER OR
7 FOR WORSE.

8 THE COURT: I THINK THE COMPLAINT IS FINE. I DIDN'T
9 HAVE ANY PROBLEM WITH IT. I AGREE WITH YOU.

10 MR. SHERMAN: I HAVE A PROBLEM WITH IT, YOUR HONOR.
11 WE WILL BE AMENDING THE COMPLAINT.

12 AND I'VE INDICATED THAT TO THE MDL PANEL, THAT WAS IN OUR
13 REPLY. I EXPECT THAT THE AMENDMENT TO THE COMPLAINT WILL BE
14 READY IN APPROXIMATELY TWO WEEK'S TIME. BUT THAT WAS AN FYI.

15 THE COURT: OKAY. THAT'S FINE, SURE.

16 MR. SHERMAN: BUT ALSO, YOUR HONOR, SINCE WE ARE ON
17 THE SUBJECT OF STAY, BY THE WAY, IN EARLY FEBRUARY, THE PTAB
18 ISSUED AN ORDER ON ONE OF THE PATENTS THAT IS THE SUBJECT OF
19 THIS LITIGATION, THE '310 PATENT. THIS WAS IN THE CASE OF
20 PERSONAL WEB AND APPLE COMPUTER. AND THIS INTER PARTES REVIEW
21 RESULTED IN A PTAB DECISION INVALIDATING THE '310 PATENT.

22 THIS WAS THE SAME PANEL THAT WAS REVERSED BY THE FEDERAL
23 CIRCUIT.

24 THE COURT: I MEAN, I GET REVERSED, AND I DON'T THINK
25 ANYONE THINKS I'M WRONG FOREVER MORE.

1 MR. SHERMAN: YOUR HONOR, YOU ARE NOT GOING TO FIND
2 ANY DISAGREEMENT. THIS IS MORE OF AN FYI, THIS WAS NOT IN OUR
3 PAPERS, THIS WAS NOT IN COUNSEL'S PAPERS, THIS IS A RECENT
4 DEVELOPMENT, THERE HAS BEEN AN ORDER BY THE PTAB, IT IS BEING
5 APPEALED TO THE FEDERAL CIRCUIT.

6 THE COURT: OKAY. SO NO ONE HAS ASKED ME TO STAY THE
7 CASES BECAUSE OF IPR PROCEEDINGS.

8 MR. HADDEN: NO, YOUR HONOR.

9 MR. SHERMAN: EXACTLY.

10 THE COURT: THAT'S FINE. I JUST WANTED TO SAY THAT.

11 MR. SHERMAN: I JUST WANTED TRANSPARENCY.

12 THE COURT: LET ME JUST SAY, MR. SHERMAN, IF YOU WANT
13 TO AMEND THE COMPLAINT, THAT'S FINE. AND IF IT'S OPPOSED OR
14 STIPULATED OR WHATEVER, IT COULD CAUSE ME TO TERMINATE ALL
15 PENDING MOTIONS, BECAUSE THEY DON'T RELATE TO THE OPERATIVE
16 PLEADING.

17 MR. SHERMAN: WELL --

18 THE COURT: SO PLEASE UNDERSTAND THAT, WHICH COULD
19 CAUSE YOU TO LOSE THE JUNE 14TH DATE.

20 MR. SHERMAN: I --

21 THE COURT: I SAY THIS BECAUSE I DON'T WANT YOU TO BE
22 UNAWARE OF POTENTIAL CONSEQUENCES.

23 MR. SHERMAN: THOSE ARE NOT CONSEQUENCES THAT WOULD
24 NECESSARILY CAUSE ME TO STAY UP AT NIGHT. I MEAN, THEY ARE
25 CONSEQUENCES, BUT THIS IS WHAT HAPPENS IN THE CONDUCT OF

10:29:33 1 LITIGATION.

10:29:34 2 THE COURT: OKAY.

10:29:34 3 MR. SHERMAN: THE POINT IS THAT WE'VE SPENT, MY
10:29:37 4 CLIENT HAS INVESTED CONSIDERABLE RESOURCES STUDYING THIS, THE
10:29:42 5 COMPLEXITIES OF THE HDT PROTOCOL. AND THESE PATENTS PREDATE
10:29:51 6 THE MODERN DAY INTERNET AS WE KNOW IT.

10:29:53 7 SO THE POINT IS --

10:29:54 8 THE COURT: THAT'S WHY THEY ARE EXPIRED.

10:29:58 9 MR. SHERMAN: IF EVERYTHING STAYS ON TRACK AND
10:30:05 10 NOTHING IS TAKEN OFF CALENDAR, YOUR HONOR, I WOULD LIKE THE
10:30:09 11 OPPORTUNITY, IF YOU WOULD LIKE, I WILL MAKE A MOTION, I WILL
10:30:13 12 MEET AND CONFER WITH MR. HADDEN, YOU KNOW, THE DECLARATION OF
10:30:19 13 MR. SHENOY WAS FILED IN THE REPLY PAPERS, AND THEY COULD HAVE
10:30:23 14 FILED IT IN THEIR MOVING PAPERS.

10:30:25 15 THE COURT: I KNOW.

10:30:25 16 MR. SHERMAN: AND I'M NOT CAPABLE STANDING HERE --

10:30:30 17 THE COURT: SURE.

10:30:30 18 MR. SHERMAN: -- OF REFUTING THAT IN ANY --

10:30:34 19 THE COURT: WELL, AND I AM VERY SYMPATHETIC TO THAT
10:30:36 20 POSITION YOU WERE PUT IN TO HAVE THIS LENGTHY REPORT. BUT, YOU
10:30:41 21 KNOW, I AM REALLY LOOKING AT, YOU DIDN'T HEAR ME MENTION THAT
10:30:45 22 AS A BASIS FOR MY TENTATIVE LEANING TO GRANT THE MOTION. I WAS
10:30:51 23 BASING IT ON YOUR COMPLAINT AND YOUR EXPERT.

10:30:54 24 SO, YOU KNOW, I REALLY UNDERSTAND GETTING HIT WITH A
10:31:00 25 200-PAGE SUPPLEMENT IN THE REPLY BRIEF IS VERY DIFFICULT. BUT

1 I -- I WOULD, OF COURSE, RATHER SEE A MOTION FOR PRELIMINARY
2 INJUNCTION AFTER THE INFRINGEMENT CONTENTIONS ARE FILED, BUT
3 I'M NOT GOING TO HAVE THAT LUXURY.

4 AND THAT'S WHY I SUGGESTED THAT EVEN IF I WERE TO GRANT,
5 EITHER FORM OF RELIEF, THAT I WOULD MAKE IT CLEAR THAT YOU
6 COULD SEEK MODIFICATION OF AN INJUNCTION OR LIFTING OF A STAY
7 UPON FILING OF INFRINGEMENT CONTENTIONS THAT DO THE MAPPING
8 THAT WOULD BE REQUIRED THERE.

9 AND I THINK -- BECAUSE BOTH A STAY AND AN INJUNCTION HAVE
10 TO BE NARROWLY TAILORED IN A SHORTENED TIME AS POSSIBLE TO
11 PROTECT THE INTEREST OF THE PARTIES.

12 AND SO WITH THIS COMPLAINT, WHICH I FIND TO BE, IT'S FINE,
13 IT'S COMPLETELY ADEQUATE, BUT --

14 MR. SHERMAN: THANK YOU.

15 THE COURT: BUT IT ISN'T ADEQUATE FOR THIS MOTION.
16 HENCE, DR. RUSS'S SUPPLEMENTAL, AND HE DIDN'T SAY WHAT I WOULD
17 HAVE EXPECTED HOPED HIM TO SAY.

18 AND SO I SAT BACK FROM THAT AND I -- IN WHAT I COULD SEE
19 AT THIS POINT, IT MAY BE THAT DR. RUSS IS UNABLE TO MAP THE
20 PRODUCTS ON TO THESE CLAIMS UNTIL YOU HAVE SOME DISCOVERY. AND
21 I APPRECIATE THAT.

22 MR. SHERMAN: AND THAT'S OUR POSITION AS WELL,
23 YOUR HONOR.

24 THE COURT: SURE. AND I'M NOT GOING TO LET YOU HAVE
25 THAT RIGHT NOW. BUT --

10:32:30 1 MR. SHERMAN: I'M SORRY, DID YOU SAY YOU ARE NOT
10:32:32 2 GOING TO LET US?

10:32:33 3 THE COURT: THERE IS GOING TO BE A STAY, THERE WON'T
10:32:37 4 BE ANY DISCOVERY, CORRECT?

10:32:38 5 MR. SHERMAN: WHAT I WAS SAYING, YOUR HONOR, IS WE
10:32:40 6 ARE PREPARING WITHOUT THE BENEFIT OF ANY DISCOVERY, TO PROPOSE
10:32:46 7 OUR AMENDED COMPLAINT.

10:32:47 8 THE COURT: THAT'S FINE.

10:32:48 9 MR. SHERMAN: OKAY.

10:32:49 10 THE COURT: THAT, YOU CAN DO.

10:32:50 11 ALL RIGHT. SO HERE'S WHAT I THINK I'M GOING TO DO TODAY,
10:32:54 12 WE'VE GOT, BECAUSE SO MANY BALLS ARE IN THE AIR, AND
10:32:58 13 MR. SHERMAN IS ABSOLUTELY CORRECT THAT I HAVE TO BE CERTAIN OF
10:33:01 14 SUBJECT MATTER JURISDICTION, SO IF THE AMAZON CASE CAN'T
10:33:06 15 PROCEED, THEN THERE'S A WHOLE DIFFERENT SITUATION, PERHAPS
10:33:09 16 INTERVENTION WILL HAVE TO BE CONSIDERED AT THAT POINT, BUT
10:33:13 17 BASED UPON THE AGREEMENT OF THE PARTIES, I AM GOING TO STAY
10:33:16 18 THIS CASE WITH THE EXCEPTION OF MDL ACTIVITY UNTIL JUNE 14TH
10:33:22 19 WHEN YOU RETURN TO COURT ON THE PREVIOUSLY FILED MOTION TO
10:33:26 20 DISMISS.

10:33:27 21 IN THE EVENT THAT AN AMENDED PLEADING IS FILED, THEN I
10:33:32 22 WILL HAVE TO LOOK AT IT. BUT I MAY TERMINATE WITHOUT
10:33:36 23 PREJUDICE, THE PENDING MOTIONS AND CONTINUE THE STAY UNTIL
10:33:41 24 THERE HAS BEEN -- WELL, I GUESS THERE WILL BE A FURTHER
10:33:49 25 MOTION -- I MEAN, THE MOTION TO DISMISS IS FILED BY THE

10:33:52 1 DEFENDANTS, YOU'RE OPPOSING THE MOTION BASED ON NO CASE OR
10:33:57 2 CONTROVERSY.

10:33:58 3 NO, I GUESS UNDER DEC RELIEF, IT'S YOUR MOTION. I'M
10:34:02 4 SORRY, I'M GETTING CONFUSED.

10:34:04 5 IN THE AMAZON CASE, DO YOU WANT TO AMEND?

10:34:06 6 MR. SHERMAN: NO, WE WISH TO AMEND --

10:34:08 7 THE COURT: SO THEN THE AMAZON --

10:34:10 8 MR. HADDEN: THEY WANT TO FILE 55 NEW CUSTOMER SUITS.

10:34:14 9 THE COURT: SO THEN THE AMAZON CASE MIGHT HAVE TO BE
10:34:17 10 AMENDED.

10:34:18 11 MR. HADDEN: YOUR HONOR, AT SOME POINT, THEY FILED 50
10:34:20 12 COMPLAINTS. WE BROUGHT OUR PI MOTION BASED ON THOSE
10:34:25 13 COMPLAINTS. AND AS YOUR HONOR RECOGNIZED, THE COMPLAINTS AS
10:34:28 14 PLED, THEIR THEORY MAPS TO AMAZON.

10:34:31 15 NOW IF THEY ARE GOING TO CONCOCT SOME NEW COMPLAINT, I
10:34:36 16 DON'T KNOW WHERE THAT LEADS US, THEY CAN'T JUST TRYING TO PLEAD
10:34:40 17 THE THEIR WAY OUT OF THE FACT THEY ARE ACCUSING AMAZON.

10:34:44 18 THE COURT: WELL, I DON'T WANT TO MAKE THIS MORE
10:34:46 19 DIFFICULT. I WANTED TO GIVE MR. SHERMAN THE OPPORTUNITY.

10:34:49 20 MR. HADDEN: I UNDERSTAND, YOUR HONOR.

10:34:49 21 THE COURT: SO -- AND I GOT BALLED UP IN THIS. SO
10:34:52 22 THE MOTION TO DISMISS IS YOUR MOTION --

10:34:57 23 MR. HADDEN: NO, THEIR MOTION.

10:34:58 24 THE COURT: YOUR MOTION TO DISMISS THE DECLARATORY
10:35:00 25 RELIEF BASED ON NO CASE OR CONTROVERSY. OKAY.

10:35:03 1 AND THAT'S SET FOR JUNE 14TH. AND NO AMENDMENT IS GOING
10:35:06 2 TO BE FILED THERE. THAT'S GOING TO GO FORWARD. OKAY. GOOD.

10:35:10 3 I'M GOING TO STAY THIS ACTION UNTIL JUNE 14TH WITH THE
10:35:16 4 EXCEPTION OF THE MDL ACTIVITY, OF COURSE.

10:35:19 5 MR. SHERMAN: AND IF WE CHOOSE TO FILE AN AMENDED --

10:35:23 6 MR. HADDEN: WELL, NO, IF IT IS STAYED, THEY
10:35:28 7 SHOULDN'T BE FILING THE AMENDED COMPLAINT.

10:35:30 8 THE COURT: SO THEN YOU CAN'T AMEND.

10:35:31 9 MR. SHERMAN: I WILL SEND COUNSEL THE PROPOSED
10:35:33 10 AMENDED -- I DON'T REALLY UNDERSTAND HIS POINT.

10:35:35 11 I DON'T THINK THAT COUNSEL IS SUGGESTING THAT BY ANY
10:35:39 12 CONSTRUCTION OF THE FEDERAL RULES OF CIVIL PROCEDURE, THAT WE
10:35:42 13 ARE COMPLETELY DENIED ANY OPPORTUNITY EARLY IN THE CASE BEFORE
10:35:45 14 THERE'S BEEN ANY PROCEEDINGS TO SEEK TO AMEND OUR OWN
10:35:47 15 COMPLAINTS.

10:35:50 16 THE COURT: YOU PROBABLY HAVE TO FILE A MOTION
10:35:51 17 BECAUSE IT'S MORE THAN --

10:35:54 18 MR. HADDEN: YEAH.

10:35:54 19 MR. SHERMAN: THERE'S BEEN NO RESPONSIVE PLEADING
10:35:56 20 FILED.

10:35:57 21 THE COURT: YOU HAVEN'T FILED A MOTION TO DISMISS THE
10:35:59 22 INDIVIDUAL CASES.

10:36:01 23 MR. HADDEN: NO. WE'VE ANSWERED.

10:36:04 24 THE COURT: SO I THINK YOU MIGHT BE ABLE TO -- OKAY.
10:36:16 25 SORRY. THIS PUZZLE IS GETTING TO ME WITH THE TWO CASES. IF I

1 STAY ALL OF THE INDIVIDUAL CASES, THEN YOU CAN'T FILE A MOTION
2 TO AMEND.

3 MR. SHERMAN: I CAN SEND HIM A PROPOSED MOTION.

4 THE COURT: YOU COULD SEND --

5 MR. HADDEN: HE COULD SEND ME WHATEVER HE WANTS.

6 MR. SHERMAN: I'M JUST TRYING TO BE PRACTICAL ABOUT
7 THIS, AND THE FACT IS THAT EVERY ONE OF THE INDIVIDUAL CASES,
8 BY AGREEMENT BETWEEN COUNSEL, WE HAVE BEEN QUITE COOPERATIVE UP
9 THROUGH NOW.

10 THE COURT: GOOD.

11 MR. SHERMAN: FOLKS HAVE SAID, HEY, CAN WE HAVE AN
12 EXTENSION, SURE, WE GOT MDL COMING UP.

13 THE COURT: SURE.

14 MR. SHERMAN: NOW ALL THE SUDDEN I'M HEARING
15 SOMETHING ELSE. WE'VE ANSWERED NO, THEY HAVEN'T ANSWERED.
16 MAYBE I WILL GET ANSWERS ON MONDAY TO ALL 55.

17 ALL I'M SUGGESTING IS THAT YES, THIS IS COMPLICATED, BUT I
18 DON'T BELIEVE THAT THAT SUSPENDS THE OPERATION OF THE NORMAL
19 RULES OF AMENDMENT BECAUSE WE INVESTED A LOT BEFORE WE FILED
20 AND WE ARE INVESTING A LOT --

21 THE COURT: SO NOW YOU ARE SAYING YOU ARE NOT
22 AGREEING TO A STAY UNTIL JUNE 14TH?

23 MR. SHERMAN: YOUR HONOR, I AM AGREEABLE TO A STAY.

24 THE COURT: BUT THEN YOU CAN'T FILE YOUR AMENDMENT.

25 MR. SHERMAN: OKAY. SO I WILL SEND COUNSEL BY

10:37:25 1 PROPOSED AMENDED COMPLAINT.

10:37:26 2 THE COURT: OKAY.

10:37:27 3 MR. SHERMAN: AND I WILL INDICATE TO THE MDL PANEL
10:37:29 4 THAT WE HAVE A PROPOSED -- I ALREADY HAD INDICATED TO THE MDL
10:37:33 5 PANEL THAT. I AM TRULY SEARCHING FOR SOMETHING THAT IS
10:37:38 6 PRACTICAL AND EFFICIENT.

10:37:40 7 THE COURT: ALL RIGHT.

10:37:40 8 MR. SHERMAN: RECOGNIZING THAT --

10:37:42 9 THE COURT: THANK YOU.

10:37:43 10 MR. SHERMAN: -- THIS IS COMPLICATED.

10:37:44 11 THE COURT: SO THIS IS COMPLICATED.

10:37:45 12 AND PUTTING ASIDE THE MDL, IF I HAVE MERELY 30 CASES, I
10:37:50 13 DON'T THINK I WOULD ACT VERY DIFFERENTLY THAN IF I HAVE 56.

10:37:53 14 BUT WE WILL NEED TO DISCUSS EITHER PROCEEDING ALONG THE
10:37:57 15 LINES OF THE AMAZON CASE, THAT'S WHAT MR. HADDEN HAS SUGGESTED,
10:38:03 16 OR LETTING YOU LITIGATE YOUR BEST CASE.

10:38:06 17 MR. SHERMAN: THAT'S FINE.

10:38:06 18 THE COURT: I MEAN, AS ONE -- AND STAYING ALL THE
10:38:10 19 REST, AND SEEING HOW THE BEST CASE COMES OUT. AND IF YOU LOSE
10:38:13 20 THE BEST CASE, THEN I -- YOU KNOW, I THINK EVEN A FAIRLY
10:38:20 21 MIDDLING MEDIATOR CAN TAKE CARE OF THE REST OF THE CASES.
10:38:23 22 BECAUSE IF I NEEDED TO SCHEDULE 30 TRIALS, I WANT YOU TO KNOW
10:38:27 23 THAT MY NEXT AVAILABLE TRIAL DATE IS IN FEBRUARY OF 2022.

10:38:31 24 MR. SHERMAN: OH, I WAS CLOSE.

10:38:33 25 THE COURT: SO IF I WERE TO DO BACK-TO-BACK PATENT

10:38:36 1 TRIALS, IT WOULD TAKE ME TO MY RETIREMENT.

10:38:39 2 SO THAT'S WHY I SAY WE ARE PROBABLY GOING TO PICK, AND I
10:38:43 3 WILL LET YOU PICK IT, I MEAN, YOU WILL HAVE HAD -- I WILL GIVE
10:38:46 4 YOU AMPLE OPPORTUNITY.

10:38:48 5 MR. SHERMAN: THAT'S FINE.

10:38:48 6 THE COURT: AND THEN TO -- BUT WE WILL TALK ABOUT
10:38:51 7 THAT. I HAVE TO MANAGE 30 CASES, UNLESS THE MDL PANEL DECIDES
10:38:54 8 TO SEND THEM TO NEW YORK OR SOMEWHERE ELSE AND SOME OTHER OF MY
10:38:57 9 COLLEAGUES WILL COME UP WITH A BETTER WAY OF HANDLING THEM.

10:39:01 10 MR. SHERMAN: I WOULD SAY A FAIR TO MIDDLING TRIAL
10:39:04 11 LAWYER, IF HE OR SHE THEY LOST THAT FIRST CASE, MIGHT FIGURE
10:39:06 12 OUT WHAT TO DO.

10:39:07 13 THE COURT: YOU KNOW, JUDGE ALSUP INSTITUTED HIS
10:39:09 14 SHOOTOUT LAST YEAR WITH CLAIMS WHERE EACH SIDE PICKED ITS BEST
10:39:13 15 CASE AND HE HAD A TRIAL ON THOSE. OF COURSE HIS SHOOTOUT WAS
10:39:18 16 THE HOCKEY KIND, I THOUGHT IT WAS A DUEL OF 50 PACES, BUT IT
10:39:23 17 TURNED OUT TO BE MORE LIKE THE DUEL THAN THE HOCKEY SHOOTOUT.

10:39:27 18 ALL RIGHT. I THINK WE HAVE A PLAN RIGHT NOW. I WILL
10:39:29 19 ANTICIPATE SEEING YOU AGAIN ON JUNE 14TH. I WILL, BY AGREEMENT
10:39:34 20 OF THE PARTIES, STAY THE INDIVIDUAL CASES UNTIL THAT DAY, WITH
10:39:38 21 THE EXCEPTION OF ANY ACTIVITY ON THE MDL ACTION.

10:39:42 22 I WILL, AND I'M STAYING IT FOR THE PURPOSE OF RESOLVING
10:39:48 23 THE COURT'S JURISDICTION FIRST, WHICH I AM COMPELLED TO DO.
10:39:52 24 AND THAT ISSUE IS BRIEFED IN THE PENDING MOTION TO DISMISS.

10:39:54 25 SO I THINK THAT IS THE PROPER THING TO DO. I THINK

10:39:57 1 MR. HADDEN, YOUR CLIENTS ARE ADEQUATELY PROTECTED.

10:40:01 2 ON JUNE 14TH, IT WOULD CERTAINLY BE MY HOPE THAT I CAN
10:40:06 3 GIVE YOU AN ORAL RULING, AND SO THEN I CAN DECIDE ON WHAT
10:40:10 4 HAPPENS WITH THE STAY BEYOND THAT. AND THEN I MAY BE PREPARED
10:40:14 5 TO GIVE YOU A FURTHER RULING FROM THE BENCH TO BE FOLLOWED UP
10:40:17 6 WITH THE WRITTEN ON THE PRELIMINARY INJUNCTION AND THE MOTION
10:40:21 7 TO STAY.

10:40:22 8 I WILL HAVE THE BENEFIT OF THE MDL PANEL'S DETERMINATION,
10:40:27 9 USUALLY, I HEAR FROM THEM WITHIN A WEEK OF THE HEARING.

10:40:32 10 MR. SHERMAN: WOULD YOUR HONOR CARE TO SEE A CHAMBERS
10:40:38 11 COPY OF A NON-FILED, TO-BE-FILED AMENDED COMPLAINT?

10:40:44 12 THE COURT: I THINK THAT WHAT I'M GOING TO DO THERE,
10:40:46 13 BECAUSE THERE'S A STAY, IS THAT GO AHEAD AND SEND THE INFORMAL
10:40:51 14 COPY TO MR. HADDEN, AND IF THE TWO OF YOU AGREE THAT IT WOULD
10:40:55 15 BE OF BENEFIT TO ME, YOU CAN SEND IT TO ME JOINTLY.

10:40:58 16 BUT I'M NOT GOING TO -- BECAUSE OTHERWISE I DON'T WANT IT
10:41:01 17 TO LOOK LIKE, MR. HADDEN, WHAT I GIVE WITH ONE HAND, I TAKE
10:41:04 18 BACK WITH THE OTHER.

10:41:05 19 MR. HADDEN: UNDERSTOOD, YOUR HONOR.

10:41:06 20 ON THE PI MOTION ITSELF, ARE WE GOING TO HAVE AN ARGUMENT
10:41:09 21 ON THAT ON JUNE 14TH OR --

10:41:11 22 THE COURT: SO I WON'T HAVE TIME ON JUNE 14TH.

10:41:15 23 LET'S NOW, WE HAVE --

10:41:17 24 MR. HADDEN: I'M HAPPY TO ARGUE IT NOW.

10:41:19 25 THE COURT: AND I THINK YOU ARE PREPARED FOR IT NOW.

10:41:21 1 SO LET ME, YOU KNOW, I GUESS MR. HADDEN, I WANT TO HEAR
10:41:25 2 FROM YOU AS TO WHY THE PRELIMINARY INJUNCTION WOULD BE A BETTER
10:41:30 3 OUTCOME THAN THE STAY, OTHER THAN THE OBVIOUS THAT IT WOULD
10:41:35 4 AFFECT ANY FUTURE CASES AND CASES IN OTHER JURISDICTIONS.

10:41:39 5 IF THERE'S ANY OTHER BENEFIT, AND I THINK I WAS -- AND I
10:41:49 6 HAVE SOME CONCERN, I WANTED TO BE SURE, AND I THINK I AM NOW
10:41:55 7 THAT -- AT FIRST WHAT I THOUGHT YOU WERE ARGUING IN ALLEGING IN
10:42:01 8 YOUR DEC RELIEF ACTION WAS THAT S3 DID NOT INFRINGE. AND EVEN
10:42:09 9 IF THAT'S TRUE, THAT WOULDN'T BE THE ANSWER AND IT WOULDN'T
10:42:13 10 NECESSARILY RESOLVE ANYTHING.

10:42:14 11 BUT THEN IN YOUR REPLY BRIEF, MAYBE THAT'S WHEN I FINALLY
10:42:18 12 UNDERSTOOD IT ALL, YOU ARE ALLEGING THE TOOL KIT AS WELL, WHICH
10:42:21 13 IS THE MISSING PRODUCT.

10:42:22 14 MR. HADDEN: YES. ALL OF THAT, YOUR HONOR.

10:42:24 15 AND I HAVE A TUTORIAL THAT MAY HELP EXPLAIN HOW THIS
10:42:27 16 ACTUALLY WORKS IF YOUR HONOR WANTS TO SEE IT.

10:42:29 17 THE COURT: HOW LONG IS THAT PRESENTATION?

10:42:33 18 MR. HADDEN: NOT LONG, IT'S JUST A FEW SLIDES.

10:42:36 19 THE COURT: OKAY. SURE.

10:42:38 20 MR. HADDEN: AND I SEE YOUR FIRST QUESTION, THE BASIC
10:42:40 21 DIFFERENCE BETWEEN STAYING THESE CASES IN THE PI IS OBVIOUSLY
10:42:43 22 THE AFFECT ON OTHER JURISDICTIONS.

10:42:45 23 SO IF, YOU KNOW, DESPITE OUR OPPOSITION THE MDL GETS
10:42:49 24 GRANTED, ALL THE CASES COME TO YOU, YOU HAVE THE POWER TO STAY
10:42:53 25 THEM ALL. YOU HAVE, EFFECTIVELY, THE SAME RELIEF.

1 THE ONLY OTHER ISSUE THAT I UNDERSTAND FROM MR. SHERMAN IS
2 THAT PERSONAL WEB WANTS TO KEEP FILING THESE SUITS. AND THAT
3 IS A PROBLEM. AMAZON HAS, I THINK, A MILLION SIMILARLY
4 SITUATED CUSTOMERS, AND JUST HAVING THEM GET PICKED OFF EITHER
5 ALONE OR IN BUNCHES, IS PROBLEMATIC.

6 SO IF THE COURT -- YOU KNOW, THE ISSUE YOU EXPRESSED TODAY
7 THAT THEY SHOULD BE RESOLVED IN A SINGLE CASE, EITHER AMAZON'S
8 DECLARATORY RELIEF ACTION OR SOME GENERIC CUSTOMER SHOULD GO
9 FORWARD AND FIGHT THAT. THERE SHOULDN'T BE NEW CASES BEING
10 FILED. THAT THEY ARE FILED, THEY SHOULD BE STAYED IMMEDIATELY.

11 THE COURT: SO I UNDERSTAND WHERE WE ARE ON OPEN
12 SOURCE.

13 MR. HADDEN: YEAH. CAN I JUST COMMENT ON THAT?

14 THIS NOTION THAT THEY NEED ADDITIONAL INVESTIGATION AND
15 HAVE TO AMEND NOW, RUBY ON RAILS IS OPEN SOURCE. THEY COULD
16 HAVE -- DR. ROSS COULD HAVE DONE ANYTHING HE NEEDED.

17 THE COURT: THEY CAN BUY IT.

18 MR. HADDEN: IT'S FREE. IT'S OPEN SOURCE. SO THEY
19 COULD EXAMINE IT UP THE WAZOO AND FIND WHATEVER THEY WANT.

20 AND THE FACT THAT, AS YOUR HONOR NOTED, DR. RUSS COULD NOT
21 MAP A CLAIM TO IT AFTER WHATEVER ANALYSIS HE DID, KIND OF
22 PROVES THE POINT, WHICH IS WHY SEEING A BUNCH OF THESE
23 COMPLAINTS FROM THESE GUYS IS NOT VERY ENCOURAGING.

24 MR. SHERMAN: YOUR HONOR, I DID NOT GET THE SENSE IN
25 THE READING OF THESE PAPERS, AND I'M NOT REALLY SURE HOW THIS

1 WOULD WORK LEGALLY, THAT A PARTY THAT CLAIMS THAT THEIR PATENTS
2 ARE BEING INFRINGED, IS BEING ENJOINED FROM SUING AN INFRINGER.

3 I MEAN, I NEED TO SEE THAT IN THEIR PAPERS. I DON'T KNOW
4 HOW THAT COEXISTS WITH DUE PROCESS OR ANY STATUTES OF
5 LIMITATION.

6 THE COURT: SO I WAS WAY MORE COMFORTABLE WITH A STAY
7 WHERE I HAVE FAIR LATITUDE AND DISCRETION IN CONTROLLING CASES
8 ON MY OWN DOCKET AS OPPOSED TO AN INJUNCTION. BUT I WANTED TO
9 HEAR FROM MR. HADDEN WHAT BENEFITS HE SAW FOR PROSECUTION OF
10 THESE CASES.

11 MR. SHERMAN, I THINK YOU RAISED AN IMPORTANT POINT, AND
12 THE -- I MEAN, I DON'T KNOW THAT AN INJUNCTION COULD PREVENT
13 YOU FROM FILING ACTIONS, IT COULD BE AN INJUNCTION THAT AFFECTS
14 THE PROCESS OF A CASE OR PROGRESS OF A CASE ONCE ITS FILED.

15 AND SO THOSE WOULD BE TWO DIFFERENT THINGS THAT WE WOULD
16 HAVE TO EXPLORE IN A LITTLE MORE DETAIL. BUT I WOULD AGREE
17 WITH YOU, I CAN'T ENJOIN YOU FROM FILING CASES BECAUSE YOU
18 COULD LOSE RIGHTS. AND I DIDN'T SEE THAT IN THE PAPERS.

19 THE COURT: AND I DON'T THINK, I'M NOT GOING TO TAKE
20 THE TIME TO LOOK FOR THAT NOW.

21 SO GO AHEAD, MR. HADDEN.

22 MR. HADDEN: SURE. TIME TO ARGUE?

23 THE COURT: YEAH.

24 MR. HADDEN: OKAY. GREAT.

25 (OFF-THE-RECORD DISCUSSION.)

10:46:21 1 THE COURT: SO IS THIS SOMETHING I'M GOING TO GET ON
10:46:23 2 THE VIDEO?

10:46:24 3 MR. HADDEN: YEAH, IF I COULD GET THE SCREEN ON.

10:46:26 4 MR. SHERMAN: YOUR HONOR, WHILE THIS IS OCCURRING,
10:46:29 5 DOES THE COURT MIND IF I SIT AT COUNSEL TABLE?

10:46:31 6 THE COURT: ABSOLUTELY. PLEASE DO. AT A PLACE WHERE
10:46:33 7 YOU CAN SEE THIS, I THINK YOU'VE GOT SCREENS THERE.

10:46:37 8 MR. HADDEN: UNFORTUNATELY, I CAN'T SEE IT. IS THERE
10:46:39 9 A SCREEN I CAN WHEEL OVER? OKAY.

10:46:52 10 MR. SHERMAN: YOUR HONOR, MAY WE GET A COPY OF
10:46:54 11 WHATEVER COUNSEL IS SHOWING?

10:46:55 12 MR. HADDEN: HERE IS A COPY OF ONE. AND IF I COULD
10:47:03 13 HAND UP SOME SLIDES TO YOUR HONOR.

10:47:05 14 THE COURT: I APPRECIATE THAT. THANK YOU.

10:47:30 15 MR. SHERMAN: YOUR HONOR, WHILE WE ARE SETTING UP, IF
10:47:32 16 I MAY.

10:47:33 17 MR. HADDEN SAYS THEY HAVE A FEW SLIDES, AND I HAD INQUIRED
10:47:37 18 ABOUT THE OPPORTUNITY TO RESPOND TO DR. SHENOY'S -- I'M MAKING
10:47:43 19 SURE THAT THIS IS NOTED FOR THE RECORD THAT THIS IS, LIKE,
10:47:47 20 45 PAGES.

10:47:49 21 THE COURT: I DIDN'T SEE ANYTHING FILED TO STRIKE THE
10:47:51 22 REPLY DECLARATION.

10:47:54 23 MR. HADDEN: THEY ARE JUST DEMONSTRATIVES, I'M NOT
10:47:57 24 SURE WHAT THE BEEF IS.

10:47:58 25 MR. SHERMAN: WE WEREN'T EVEN GIVEN THEM IN ADVANCE.

1 BUT REGARDLESS, I THINK THAT THIS HIGHLIGHTS THE
2 DESIRABILITY, IF WE ARE GOING TO GET TO A FINAL DETERMINATION
3 BY THIS COURT ON THE SUBJECT OF THE PRELIMINARY INJUNCTION
4 MOTION, THAT WE --

5 THE COURT: SO MY RULING -- THE ISSUES BEFORE ME
6 TODAY HAVE VERY LITTLE TO DO WITH THE TECHNOLOGY, IT HAS TO DO
7 WITH THE PLEADING, NOT THE UNDERLYING TECHNOLOGY. AND SO I
8 ASSUME THIS IS A COUPLE OF MINUTES.

9 MR. HADDEN: YEAH. IT'S NOT THAT LONG, YOUR HONOR.
10 I WANTED TO EXPLAIN WHAT THEY ARE PLEADING IN THEIR COMPLAINT
11 AND HOW THAT ACTUALLY WORKS IN S3.

12 THE COURT: OKAY.

13 MR. HADDEN: IF YOUR HONOR DOESN'T FIND IT HELPFUL, I
14 WILL OBVIOUSLY STOP.

15 THE COURT: OKAY.

16 MR. HADDEN: SO AS YOUR HONOR NOTED, AND I WILL JUST
17 START WITH THIS SLIDE 4 FROM THE COMPLAINT, RIGHT. THEY TALK
18 ABOUT DEFENDANT'S UPLOAD THEIR CONTENT TO AMAZON S3, S3 THEN
19 GENERATES THESE ETAGS, AND THEN THERE'S A LOT OF DISCUSSION IN
20 THE COMPLAINT WITH THE USE OF THE ETAGS IN THESE CONFIDENTIAL
21 GETS, AND THIS IF-NONE-MATCH HEADERS.

22 AND THAT'S REALLY THE BASIS OF ALL OF THEIR CLAIMS AND ALL
23 OF THEIR MAPPINGS IN EVERY CLAIM OF THE COMPLAINT TO THE
24 ACCUSED TECHNOLOGY, WHICH IS S3.

25 SO JUST A LITTLE EXPLANATION FOR WHAT THIS REALLY MEANS IN

10:49:26 1 THE REAL WORLD, RIGHT. SO S3, WHICH STANDS FOR SIMPLE STORAGE
10:49:30 2 SOLUTION, IS NOT VERY SIMPLE, AND IT'S VERY LARGE, BUT IT IS
10:49:39 3 AMAZON'S CLOUD STORAGE SERVICE. AND IT HOLDS, KIND OF,
10:49:46 4 RIDICULOUS AMOUNTS OF DATA IN DATA CENTERS ALL OVER THE GLOBE,
10:49:50 5 BUT IT'S SIMPLE IN THAT IT PRESENTS A VERY SIMPLE SET OF
10:49:54 6 FUNCTIONS TO USE.

10:49:58 7 SO IT HAS THESE THINGS CALLED BUCKETS, WHICH ARE JUST KIND
10:50:01 8 OF LOGICAL COLLECTIONS OF OBJECTS. SO IF YOU ARE A CUSTOMER,
10:50:05 9 YOU CAN HAVE YOUR OWN BUCKET AND THEN YOU PUT THINGS IN THE
10:50:08 10 BUCKET AND YOU GET THINGS OUT OF THE BUCKET.

10:50:10 11 AND THAT'S WHAT S3 DOES. BUT IT DOES IT REALLY FAST,
10:50:14 12 REALLY RELIABLY WITH JUST RIDICULOUS AMOUNTS OF DATA.

10:50:18 13 SO A COMMON USE CASE, AND THE ONE THAT IS BEING ACCUSED IN
10:50:22 14 THESE COMPLAINTS, IS THAT IF YOU ARE A COMPANY THAT OPERATES A
10:50:27 15 WEBSITE, YOU WOULD STORE YOUR STATIC CONTENT IN S3.

10:50:33 16 SO THE THINGS LIKE THE IMAGES FOR YOUR WEBSITE, THE
10:50:36 17 JAVASCRIPT, THE STYLE SHEETS, THE STUFF THAT DOESN'T CHANGE FOR
10:50:39 18 A PARTICULAR CUSTOMER WHEN THEY GO TO THE SITE.

10:50:44 19 SO THE CUSTOMERS UPLOAD THAT STUFF INTO S3 AS OBJECTS INTO
10:50:48 20 THE BUCKET, AND S3 CALCULATES THIS THING CALLED AN ETAG. IT'S
10:50:52 21 SHORT FOR ENTITY TAG. AND IT'S BASICALLY -- IT'S A
10:50:57 22 MATHEMATICAL FUNCTION OF THE DATA IN THE OBJECT.

10:51:00 23 AND THE POINT OF IT IS BASICALLY A VERSIONING DEVICE.
10:51:05 24 BECAUSE IF THE DATA IN THE OBJECT CHANGES, THEN THE ETAG
10:51:08 25 CHANGES. SO YOU CAN DETERMINE IF TWO OBJECTS ARE THE SAME BY

1 DETERMINING THEIR ETAGS INSTEAD OF COMPARING THE OBJECTS
2 THEMSELVES. AND THAT'S THE POINT OF IT. AND ETAGS ARE A
3 CONCEPT OF PART OF THE HTTP PROTOCOL, THEY ARE AN OPTIONAL
4 FEATURE.

5 SO THE WAY THAT THIS WORKS IN THE COMPLAINT IS THAT THE
6 CUSTOMER, HERE WEBCO, A GENERIC WEBSITE, UPLOADS THE STATIC
7 CONTENT INTO S3. S3 GENERATES THIS ETAG, AND THEN WHEN A
8 CUSTOMER GOES TO THE WEBSITE, MAKES A REQUEST, TYPICALLY THE
9 WEBSITE WILL GENERATE SOME DYNAMIC CONTENT, THE ACTUAL HTML
10 THAT IT SENDS TO A SPECIFIC CUSTOMER. IT SENDS IT BACK, AND
11 THAT HTML HAS A BUNCH OF EMBEDDED REQUESTS FOR THESE, THE
12 IMAGES AND ALL OF THAT. THE REQUESTS ACTUALLY GO NOT TO THE
13 COMPANY'S WEB SERVER, BUT TO S3. SO THEY GO DIRECTLY TO S3.
14 YOU PUT THE OBJECT IN, YOU GET IT OUT.

15 AND THERE ARE, ON THE ORDER, AS TREVOR ROWE INDICATED IN
16 HIS DECLARATION, 12 TRILLION SUCH REQUESTS A MONTH TO S3. SO
17 BASICALLY GO TO ANY WEBSITE, AND IF YOU LOOK AT THE HTML
18 UNDERNEATH YOU WILL SEE S3 IN THERE FOR ALL THE IMAGES, BECAUSE
19 ALL OF THEM ARE STORED IN HERE, RIGHT.

20 AND SO, THE BROWSER GOES DIRECTLY TO S3, IT GETS THE IMAGE
21 BACK, THE BROWSER USES IT TO RENDER THE PAGE, YOU HAVE YOUR
22 PUPPY PICTURE. THE BROWSER WILL TYPICALLY STORE THAT IMAGE IN
23 ITS CACHE, SO IF IT GOES BACK TO THE PAGE IT HAS THE
24 OPPORTUNITY TO USE IT AGAIN.

25 SO THE TRICK IS IF YOU INCLUDE AN ETAG, LIKE S3 DOES IN

1 RESPONSE, THERE'S SOMETHING CALLED A CONDITIONAL GET. SO WHAT
2 HAPPENS IS IF THIS USER GOES BACK TO THE WEB PAGE OR A RELATED
3 WEB PAGE, GETS NEW HTML, THAT HTML HAS ANOTHER "GET" TO THE
4 SAME OBJECT NAME.

5 SO IT COULD BE PUPPY.JPEG, RIGHT. IT'S THE IMAGE OF THE
6 DOG. INSTEAD OF GOING TO S3 AND SAY, GIVE IT TO ME AGAIN, THE
7 BROWSER SENDS HIS CONDITIONAL GET. SO IT SAYS, GET IT FOR ME,
8 IF NONE MATCH THIS ETAG.

9 SO BASICALLY IT SAYS, SENDS THIS REQUEST, GOES BACK UP TO
10 S3, S3 COMPARES THE ETAG IN THE REQUEST TO THE ETAG IT HAS FOR
11 THE CURRENT OBJECT. IF THEY ARE THE SAME, IT SAYS YOU ARE
12 GOOD, SENDS IT IN THIS FORMAT, AND YOU CAN USE WHAT'S IN YOUR
13 CACHE. SO THAT'S KIND OF THE BASIC PATH THAT THIS GOES TO.

14 THE ALTERNATIVE, OF COURSE, IS IF THE OBJECT HAS BEEN
15 CHANGED IN S3, SO IF THERE'S A NEW PUPPY IMAGE, THE WEBSITE
16 OPERATOR HAS CHANGED THEIR WEBSITE, STILL HAS THE SAME NAME,
17 PUPPY.JPEG, BUT IT'S DIFFERENT.

18 IT WILL GET A NEW ETAG, THE ETAG WILL BE DIFFERENT BECAUSE
19 THE IMAGE IS DIFFERENT.

20 THE COURT: SO YOU ESSENTIALLY DISAGREE THAT RUBY ON
21 RAILS USES THE FINGERPRINT WHICH IS WHAT UPDATES THIS.

22 MR. HADDEN: WE WILL GET TO RUBY ON RAILS, AND RUBY
23 ON RAILS HAS NOTHING TO DO WITH THIS.

24 THE COURT: I'M NOT MAKING THAT DECISION, THAT'S JUST
25 YOUR ARGUMENT.

10:54:33 1 MR. HADDEN: I WILL EXPLAIN THAT IN A SECOND.

10:54:34 2 SO NEW REQUEST, NEW HTML. IT'S GOT A REFERENCE AGAIN TO
10:54:37 3 THE PUPPY IMAGE. RESEND OUR CONDITIONAL GET FROM THE BROWSER,
10:54:42 4 SAME ONE, GOES UP TO THE ETAG.

10:54:45 5 NOW THE ETAGS DON'T MATCH BECAUSE THE PUPPY HAS BEEN
10:54:48 6 UPDATED IN S3. SO INSTEAD, S3 SENDS BACK THE NEW PUPPY IMAGE
10:54:53 7 WITH THIS HTTP 200. OKAY.

10:54:57 8 NEW IMAGE SHOWS, GETS REPLACED IN THE CACHE, RIGHT.

10:55:01 9 THIS IS EVERYTHING THAT THE COMPLAINT ACCUSES.

10:55:08 10 THE COURT: IT'S PRETTY STRAIGHTFORWARD.

10:55:11 11 MR. HADDEN: STRAIGHTFORWARD, RIGHT. IT'S DONE A
10:55:13 12 ZILLION TIMES FOR MILLIONS OF CUSTOMERS ALL THE TIME. NONE OF
10:55:13 13 THIS DEPENDS ON RUBY ON RAILS.

10:55:18 14 SO WHAT'S RUBY ON RAILS?

10:55:18 15 THE COURT: WELL, I WILL WAIT TO SEE, THAT'S
10:55:20 16 PLAINTIFF'S JOB TO LET ME KNOW HOW RUBY ON RAILS CONTRIBUTES
10:55:25 17 HERE.

10:55:25 18 MR. HADDEN: AS ALLEGED IN THE COMPLAINT, RUBY ON
10:55:27 19 RAILS DOES TWO THINGS. IT'S USED BY WEBSITE OPERATORS TO BUILD
10:55:34 20 WEB APPLICATIONS, IT'S A FRAMEWORK. AND USING THE AMAZON RUBY
10:55:40 21 SDK, THOSE CUSTOMERS CAN KIND OF AUTOMATE THE LOADING OF THEIR
10:55:47 22 DATA INTO S3.

10:55:50 23 NOW THERE'S THIS OPTIONAL FEATURE WHERE YOU CAN CREATE A
10:55:54 24 FINGERPRINT. WHAT THE FINGERPRINT DOES THOUGH, IS IT GETS
10:55:57 25 ADDED TO THE NAME OF THE OBJECT. SO INSTEAD OF PUPPY.JPEG,

10:56:02 1 IT'S PUPPYFINGERPRINT.JPEG.

10:56:05 2 THE COURT: AND THAT IS A RUBY ON RAILS FUNCTION?

10:56:07 3 MR. HADDEN: THAT IS THE ACCUSED FEATURE OF RUBY ON
10:56:09 4 RAILS.

10:56:09 5 THE COURT: AND YOU DON'T DISAGREE WITH THE
10:56:11 6 FINGERPRINT.

10:56:11 7 MR. HADDEN: I DON'T DISAGREE, BUT THE FINGERPRINT
10:56:14 8 JUST BECOMES PART OF THE NAME FOR THE OBJECT IN S3, RIGHT.

10:56:17 9 SO NOW WE HAVE THIS RED OBJECT, IT'S GOT THE NAME.

10:56:20 10 THE KEY POINT IS THAT NONE OF THAT HAS ANYTHING TO DO WITH
10:56:24 11 THESE CONDITIONAL GETS.

10:56:25 12 CONDITIONAL GETS ARE ALL SPECIFIED BASED ON THE ETAG, NOT
10:56:30 13 THE NAME OF THE OBJECT OR THE FILE.

10:56:34 14 SO EVERYTHING IN THEIR COMPLAINT THAT REFERS TO
10:56:37 15 CONDITIONAL GETS, IF NONE MATCH HEADERS OR ETAGS, IS ALL BASED
10:56:41 16 ON THIS SIMPLE PROCESS THAT WE SAW IN S3. AND IT'S THE SAME
10:56:47 17 PROCESS THAT HAPPENS, IF IT'S A RUBY ON RAILS OBJECT OR ANY
10:56:50 18 OTHER.

10:56:53 19 REQUEST THE OBJECT, YOU GET THE HTML, YOU GET THE "GET."
10:56:57 20 YOU GO UP TO S3, YOU GET THE OBJECT. IT'S GOT A NAME THAT HAS
10:57:00 21 A FINGERPRINT IN IT, DOESN'T MAKE ANY DIFFERENCE TO THE WEB
10:57:03 22 BROWSER. THE WEB BROWSER WILL MAKE THE CONDITIONAL GET BASED
10:57:06 23 OFF THE ETAG. GOES BACK UP TO S3, EXACT SAME COMPARISON.

10:57:12 24 THE COURT: SO I -- UNFORTUNATELY, I'M COMING TO THE
10:57:14 25 END OF THIS HOUR AND I AM GOING TO MOVE YOU ALONG.

10:57:16 1 MR. HADDEN: YEAH.

10:57:17 2 THE COURT: OKAY. SO IS THERE ANY -- I WANT YOU TO
10:57:21 3 KNOW THAT, AS I SAY, I AM PROBABLY LEANING MORE TO A STAY THAN
10:57:29 4 TO AN INJUNCTION, BECAUSE I REALLY DON'T WANT TO CREATE THE
10:57:34 5 CONCERNS THAT MR. SHERMAN HAS ABOUT HIS FUTURE SUITS. AND I
10:57:40 6 DON'T THINK I CAN REACH OUT THAT FAR AND IN ANY WAY PERIL HIS
10:57:46 7 CLIENT'S RIGHT TO FILE THOSE CASES TIMELY. YOU CAN SERIALLY
10:57:55 8 ASK TO MODIFY AN INJUNCTION AS WELL, ONCE THERE'S AN IDENTIFIED
10:57:58 9 CASE. SO THERE ARE WAYS TO DEAL WITH THIS, CERTAINLY.

10:58:02 10 SO LET ME JUST, IS THERE ANYTHING ELSE ON -- AND AGAIN,
10:58:05 11 JUST ON THE INJUNCTION OR STAY ISSUE.

10:58:08 12 MR. HADDEN: NO, YOUR HONOR.

10:58:09 13 I DO THINK KATZ IN THE FEDERAL CIRCUIT AUTHORIZED
10:58:14 14 YOUR HONOR TO ENJOIN SUITS IN THIS SITUATION, AND THAT THE
10:58:19 15 GRANT OR DENIAL OF THAT INJUNCTION REQUEST IS IMMEDIATELY
10:58:23 16 APPEALABLE TO THE FEDERAL CIRCUIT.

10:58:25 17 SO I DON'T THINK THERE'S ANY DISPUTE ABOUT THE COURT'S
10:58:28 18 POWER. AS A PRACTICAL MATTER, IF THE COURT IS GOING TO STAY
10:58:32 19 ALL OF THESE CASES, THE EFFECT IS GOING TO BE THE SAME.

10:58:36 20 THE COURT: OKAY.

10:58:37 21 MR. SHERMAN, LET ME GIVE YOU THE LAST WORD HERE ON THIS.
10:58:41 22 I'M NOT GOING TO BE DECIDING THIS RIGHT NOW, BUT THIS IS WHEN
10:58:45 23 WE HAVE OUR --

10:58:46 24 MR. SHERMAN: I UNDERSTAND, AND I WOULD LOVE THE
10:58:48 25 OPPORTUNITY, AND PERHAPS AT OUR NEXT HEARING, TO PRESENT OUR

1 OWN LITTLE SERIES OF IMAGES, CARTOONS, WHATEVER.

2 THE COURT: ULTIMATELY, I HAVE A TUTORIAL ON YOUR
3 PATENT.

4 MR. SHERMAN: I UNDERSTAND. BUT WE WOULD LIKE THE
5 MINI-EARLY TUTORIAL AS WELL, AND I KNOW YOU DON'T WANT TO HEAR
6 IT TODAY.

7 WITH RESPECT TO SOME OF THE POINTS THAT COUNSEL JUST
8 RAISED, I DO THINK THAT THE ISSUE OF THE CUSTOMER SUIT
9 EXCEPTION NEEDS TO BE PUT IN ITS PROPER CONTEXT.

10 IT IS A CUSTOMER SUIT EXCEPTION THAT DEALS WITH RESELLERS.
11 IT WORKS GREAT WITH GUN GRIPS, IT WORKS GREAT WITH DEVELOPERS
12 OF SMART PHONES, SUCH AS THE GOOGLE CASE WHERE THE DEVELOPERS
13 WERE USING THE GOOGLE TECHNOLOGY AND THEY WERE SELLING THE
14 SMART PHONES.

15 THESE INDIVIDUAL DEFENDANTS ARE NOT IN THE BUSINESS, AND
16 IN FACT, ARE NOT RESELLING ANYTHING OF AMAZON S3. WHILE THEY
17 MAY BE CUSTOMERS, THEY ARE NOT RESELLERS.

18 AND I BELIEVE THAT THE FOUNDATION OF THIS EXCEPTION TO THE
19 FIRST FILED SUIT DOCTRINE, IT'S AN EXCEPTION, WORKS ONLY IF YOU
20 ARE DEALING WITH CUSTOMERS WHO ARE RESELLERS.

21 I'M PLEASED THAT COUNSEL DOESN'T SPEAK ABOUT THE PRIOR
22 AMAZON ACTION, BECAUSE IT OFFERS THEM NO SUPER HERE FOR THE
23 REASONS THAT WE'VE INDICATED IN OUR OPPOSITION PAPERS.

24 BUT I THINK, IMPORTANTLY, THE AMAZON DJ ACTION WILL NOT
25 RESOLVE CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS BECAUSE

11:00:31 1 PERSONAL WEB'S THEORY OF INFRINGEMENT REVOLVES AROUND RUBY ON
11:00:36 2 RAILS NOT S3, IT IS THE RUBY ON RAIL WEBSITE OWNER THAT
11:00:40 3 CONTROLS AND DRIVES THE USE OF ETAGS. THEY ARE THE ONE THAT
11:00:47 4 CONTROL IT AND DRIVE IT, NOT AMAZON S3.

11:00:50 5 AND THEN FINALLY, YOUR HONOR, WE WOULD LIKE THE COURT AT
11:00:57 6 SOME POINT, IF YOU ARE CONSIDERING THIS, TO GIVE US THE
11:01:01 7 OPPORTUNITY TO PROVIDE SOME FORM OF A SUR REPLY WITH RESPECT TO
11:01:08 8 THE -- I'M SORRY IF I'M MISPRONOUNCING HIS NAME, THE
11:01:11 9 DECLARATION OF THEIR EXPERT. MAYBE NOW, MAYBE WITH RESPECT TO
11:01:15 10 AN AMENDED COMPLAINT, BUT I THINK THAT THAT WOULD BE
11:01:18 11 APPROPRIATE.

11:01:18 12 THE COURT: WELL, AS I SAID, I WASN'T REALLY RELYING
11:01:21 13 ON IT, BUT AS LONG AS IT'S IN THE RECORD, I DON'T KNOW THAT
11:01:27 14 IT'S --

11:01:29 15 MR. SHERMAN: WELL, WE READ THE COURT'S STANDING
11:01:30 16 ORDERS ON REPLY DECLARATIONS, THERE WAS NO REASON TO SAY STRIKE
11:01:34 17 IT. IT'S NOT THAT IT WAS EVIDENTIARY --

11:01:36 18 THE COURT: WHAT WOULD YOU LIKE AS A SUR-REPLY
11:01:38 19 THOUGH, WHAT ARE YOU ASKING FOR?

11:01:40 20 MR. SHERMAN: I'M ASKING FOR --

11:01:41 21 THE COURT: I HAVE LIMITS, I MEAN, I'M NOT GOING TO
11:01:43 22 JUST OPEN THE GATES. DO YOU WANT A THREE-PAGE BRIEF AND A
11:01:47 23 FIVE-PAGE DECLARATION?

11:01:48 24 MR. SHERMAN: YES.

11:01:48 25 THE COURT: THERE YOU ARE.

11:01:50 1 MR. SHERMAN: DON'T STOP WHEN YOU'RE AHEAD.

11:01:52 2 THE COURT: WE WILL DO BUSINESS WELL, MR. SHERMAN. I
11:01:56 3 LIKE THAT. AND HOW MUCH TIME WOULD YOU LIKE?

11:01:57 4 MR. SHERMAN: TWO WEEKS.

11:01:58 5 THE COURT: THAT'S REASONABLE. OKAY. THAT'S GOOD.

11:02:05 6 LET ME -- NOW, I UNDERSTAND FROM MY COURTROOM DEPUTY I
11:02:09 7 WILL SEE YOU ON JUNE 7TH, NOT JUNE 14TH.

11:02:11 8 MR. SHERMAN: OH.

11:02:13 9 THE COURT: APPARENTLY THERE WAS --

11:02:14 10 MR. SHERMAN: I WAS LOOKING AT THE PAPERS.

11:02:16 11 THE COURT: THAT'S RIGHT, AND APPARENTLY WHEN IT ALL
11:02:19 12 CAME OUT.

11:02:19 13 SO THE STAY WILL BE UNTIL THE HEARING. YOU UNDERSTAND IF
11:02:24 14 I'M NOT READY TO RULE, I MAY EXTEND IT, AND I'M HOPING TO KNOW
11:02:27 15 FROM THE MDL COMMITTEE AT THAT POINT.

11:02:29 16 NOW YOU MAY RUN TO THE MDL COMMITTEE, MR. SHERMAN, AND
11:02:33 17 SUGGEST A DIFFERENT JUDGE AFTER THIS HEARING, I DON'T KNOW.

11:02:35 18 MR. SHERMAN: OH, THERE'S NO WAY THAT'S GOING TO
11:02:37 19 HAPPEN, YOUR HONOR.

11:02:38 20 AND HAVE A HAPPY FLAG DAY SINCE I WON'T SEE YOU ON THE
11:02:41 21 14TH.

11:02:42 22 THE COURT: ALL RIGHT.

11:02:43 23 I THINK THAT TAKES CARE OF EVERYTHING. THIS IS, YOU KNOW,
11:02:48 24 NECESSARILY BY THE COMPLEXITY OF THE NUMBER OF PARTIES AND
11:02:51 25 ISSUES FLOATING AROUND, MY GUESS IS THESE HEARINGS WILL BE A

11:02:54 1 LITTLE BIT LENGTHY WHEN WE HAVE THEM.

11:02:56 2 AND ONCE I GET -- ONCE THE GROUND STOPS MOVING AND I KNOW
11:03:00 3 WHAT I ACTUALLY HAVE AND ONCE YOU'VE SERVED ALL THE PARTIES
11:03:05 4 THAT THERE ARE GOING TO BE, WE WILL PROBABLY HAVE TO HAVE SOME
11:03:08 5 KIND OF OMNIBUS CASE MANAGEMENT CONFERENCE WHERE WE CAN REALLY
11:03:13 6 SPEND A COUPLE OF HOURS MAPPING OUT HOW WE PROCEED.

11:03:17 7 BECAUSE, WELL, AS I SAY, I COULD END UP WITH ZERO OF THESE
11:03:20 8 CASES, JUST MY 30, BECAUSE IT'S NOT AN MDL, OR ALL OF THEM.
11:03:24 9 AND I DON'T KNOW HOW THE MDL COMMITTEE WORKS. THEY DON'T ASK
11:03:29 10 MY OPINION.

11:03:30 11 MR. SHERMAN: UNDERSTOOD.

11:03:30 12 THANK YOU VERY MUCH FOR YOUR TIME.

11:03:31 13 THE COURT: ALL RIGHT. THANK YOU ALL.

11:03:45 14 MR. SHERMAN: WE ARE TOLD THAT THERE WAS A CMC TODAY.
11:03:50 15 IS THERE A CMC SET IN THE DJ ACTION?

11:03:53 16 THE COURT: YOU KNOW WHAT, I MISSED THAT ENTIRELY.
11:03:57 17 IS THAT RIGHT, WE HAD A CMC IN YOURS?

11:04:00 18 MR. MONROE: I THINK YOU GUYS HAD, IN THE ONE OF THE
11:04:03 19 MINUTE ORDERS, I THOUGHT I REMEMBER SEEING ONE WAS A CMC.

11:04:13 20 THE COURT: FOR THE AMAZON CASE?

11:04:15 21 MR. MONROE: I THINK IT WAS IN THE SAME ORDER THAT
11:04:17 22 RESET THE HEARING DATE OF THE MOTION TO DISMISS TO --

11:04:21 23 THE COURT: SO THAT'S ON THE 7TH.

11:04:23 24 MR. MONROE: BUT I THOUGHT IT SET A CMC DATE ALSO.

11:04:27 25 THE COURT: OH, YOU DIDN'T MEAN TODAY HAVING A CMC.

11:04:32 1 MR. MONROE: THE QUESTION IS WHETHER THAT SHOULD BE
11:04:35 2 MOVED OFF.

11:04:36 3 THE CLERK: IT IS ALSO SET ON THE 7TH.

11:04:38 4 THE COURT: I DON'T KNOW THAT IT'S BENEFICIAL TO HAVE
11:04:39 5 IT THEN.

11:04:40 6 MR. MONROE: RIGHT. THAT'S WHY I RAISED IT.

11:04:42 7 MR. SHERMAN: I AGREE.

11:04:43 8 THE COURT: ALL RIGHT. I WILL PUT OUT AN ORDER
11:04:45 9 VACATING THAT CMC DATE. AND WOULD YOU REMIND ME, WE WILL HAVE
11:04:50 10 TO FIGURE OUT WHEN TO RESET IT.

11:04:52 11 I WOULDN'T DO ANYTHING, I WOULDN'T KNOW UNTIL AFTER THE
11:04:55 12 MDL COMMITTEE IS DONE. THANK YOU FOR MENTIONING THAT. I WILL
11:04:58 13 VACATE THAT DATE.

11:05:00 14 MR. MONROE: THANK YOU.

11:05:01 15 (THE PROCEEDINGS WERE CONCLUDED AT 11:05 A.M.)

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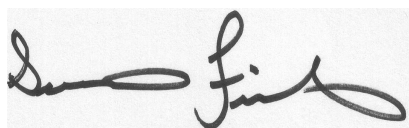
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 4/28/18